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Tracie K. Lindeman
Clerk of Supreme Court

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9
10 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

11 ***

12 Supreme Court No.

13 GEORGE "EDDIE" LORTON,

14 Petitioner,

15 vs.

16 LYNNETTE JONES, in her Official Capacity
17 as Reno City Clerk; DAN BURK, in his
18 Official Capacity as the Washoe County
19 Registrar and Chief Elections Officer of
20 Washoe County; and, ROES I-XX,

21 Respondents.

22 JESSICA SFERRAZZA; and, DWIGHT
23 DORTCH, in their Capacities as Candidates
24 for Certain Offices,

25 Real Parties in Interest.

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PETITION FOR WRIT OF MANDAMUS OR OTHER EXTRAORDINARY WRIT

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1 Petitioner George "Eddie" Lorton ("Petitioner") elector citizen, by and through his
2 counsel Stephanie Rice, Esq. of Hardy Law Group, hereby respectfully petitions this Court for a
3 Writ pursuant to NRAP 21, Art. 15, §3 of the Nevada Constitution, NRS 34.160 and NRS 34.320
4 to the Washoe County Registrar of Voters Dan Burk ("Mr. Burk") mandating that he exclude
5 Jessica Sferrazza's and Dwight Dortch's names from the 2014 election ballots, as the twelve-
6 year term limit has or will have expired with respect to both. Alternatively, Petitioner requests
7 that this Court issue a Writ of Prohibition preventing Mr. Burk from including the names Jessica
8 Sferrazza and Dwight Dortch on the ballots because they are or will be term-limited.

9 Petitioner further respectfully petitions this Court for a Writ pursuant to NRAP 21, Art.
10 15, §3 of the Nevada Constitution, NRS 34.160 and NRS 34.320 to the Reno City Clerk Lynnette
11 Jones ("Ms. Jones") mandating that she refuse any formal candidacy declarations for the 2014
12 election filed by Jessica Sferrazza or Dwight Dortch, as the twelve-year term limit has or will
13 have expired for both. Alternatively, this Petitioner requests that the Court issue a Writ of
14 Prohibition preventing Ms. Jones from accepting any candidacy declarations from Jessica
15 Sferrazza or Dwight Dortch for the same reasons.¹

16 Petitioner herein bases this request on Art. 15, §3 of the Nevada Constitution, which
17 provides that no person may be elected to any local governing body "who has served in that
18 office, or at the expiration of his current term if he is so serving will have served, 12 years or
19 more."

20 Jessica Sferrazza served her maximum allotted twelve-years as member of the Reno City
21 Council when her term ended in 2012. Dwight Dortch will have served his maximum allotted
22 terms as a member of the Reno City Council. As such, Jessica Sferrazza and Dwight Dortch are
23 prohibited by Constitutional term-limits from running for reelection for another term in any
24 seat or office as members of the Reno City Council.

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27 ¹ Petitioner recognizes that, pursuant to NRS 293C.186 the statutory procedure to contest such candidacy
28 declarations would be to make a written challenge to Jessica Sferrazza and Dwight Dortch's Declarations of
Candidacy. However, as discussed more fully herein, Petitioner believes this procedure and remedy to be wholly
inadequate given the immediate need to promptly resolve any confusion in order to avoid costly reprinting of
ballots, reprogramming of voting machines and effectively attempting to retract general absentee ballots and
ballots sent overseas to our troops after they are sent out.

1 Other potential candidates and Reno Citizens have admitted that there is an issue with
2 respect to term limits that could prohibit them from running for re-election. " 'We need to
3 know because we have to submit the information for the printing of the ballot, and that's really
4 a time-sensitive issue,' Zadra [Current City Council Member] said. 'The driving point is
5 knowing what is legal.' " Reno Gazette Journal, Running for Mayor? by Ray Hagar, September
6 30, 2013 at 2.² Publicly declared candidate Dwight Dortch also expressed the need for Court
7 clarification stating, "'We've had a few people during public comment say that they are going to
8 challenge it once the election comes around. But my [Dortch's] attitude is, it would be better
9 finding out sooner than finding out later.'" *Id.*

10 This Court has original jurisdiction over this Writ petition. Nevada Constitution Art. 6,
11 §4; NRS 34.150. There is no just, speedy, or adequate remedy at law other than issuance of a
12 Writ of Mandamus or, in the alternative, Writ of Prohibition. Furthermore, judicial economy
13 and sound administration of justice demands issuance of this Writ as this case presents a
14 unique opportunity for the Court to clarify an important issue of law for the citizens of Reno.
15 Even current Reno Mayor Robert Cashell has expressed this public need stating, "For the
16 citizens, it is best to ask the court soon to give us an opinion." RGJ, Running for Mayor? *supra.* at
17 2.

18 WHEREFORE, Petitioner makes this request upon the attached Memorandum of Points
19 and Authorities and all other matters this Court may wish to consider and respectfully ask that
20 this Court issue the Writ relief sought herein.

21 Dated this 10th day of October, 2013.

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23 STEPHANIE RICE, ESQ.
24 HARDY LAW GROUP
25 Nevada Bar No. 11627
26 98 Winter Street
27 Reno, Nevada 89503
28 (775) 786-5800
Attorney for George "Eddie" Lorton

² A true and correct online copy of the Reno Gazette Journal article Running for Mayor? by Ray Hagar dated

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT**

2 **I. RELIEF SOUGHT**

3 Petitioner respectfully asks this Court to issue a writ of mandate or, alternatively, a writ
4 of prohibition to the Washoe County Registrar of Voters Dan Burk ("Mr. Burk") directing him to
5 exclude Jessica Sferrazza and Dwight Dortch's names from the 2014 election ballots, as those
6 individuals are or will be precluded by Art. 15, §3 of the Nevada Constitution from serving
7 more than twelve years as City Council members.

8 Petitioner further asks this Court to issue a writ of mandate or, in the alternative, a writ
9 of prohibition to Reno City Clerk Lynnette Jones ("Ms. Jones") directing her to refuse any formal
10 candidacy declarations for the 2014 election filed by Jessica Sferrazza and Dwight Dortch, as
11 those individuals are or will be precluded by Art. 15, §3 of the Nevada Constitution from
12 serving more than twelve years as members of the City Council.

13 **II. ISSUES PRESENTED**

14 1. Can a termed out member of the Reno City Council serve additional terms in a
15 different City Council seat as Mayor?

16 2. Does the twelve-year term limitation imposed by Art. 15, §3 of the Nevada
17 Constitution prohibit Jessica Sferrazza and Dwight Dortch from serving additional terms on the
18 Reno City Council as Mayor?

19 **III. RELEVANT FACTS**

20 **A. History, Enactment and Application of the Twelve-Year Term**
21 **Limitation**

22 In 1994 and again in 1996, the initiative to limit terms of state and local officials
23 appeared on the general election ballots proposing to amend the Nevada Constitution to
24 impose term limits upon various state and local officers.³ Of relevant note, in Nevada, such
25 initiatives must be approved by voters at two consecutive elections before it becomes law. See,
26 Nevada Constitution, Article 19, §2(4).
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28 _____
September 30, 2013 is attached hereto at Exhibit "1."

³ A true and correct copy of the initiative from the 1994 general election is attached hereto at Exhibit "2."

1 Argument encouraging passage of the twelve-year term limitation read in pertinent
2 part: "Proponents argue that passage will **stop career politicians** since no one will be able to
3 hold office for several terms. . . . local governing body members would have the opportunity to
4 focus on the issues **instead of reelection**. [Emphasis Added]. *Id.* The term limit initiative not
5 only passed, in 1994 it overwhelmingly passed by nearly 70% and passed again in 1996.
6 Accordingly, on November 27, 1996, the twelve-year term limitation went into effect and
7 became law holding that:

8 No person may be elected to any state or local governing body who has
9 served in that office, or at the expiration of his current term if he is so
10 serving will have served, 12 years or more, unless the permissible number
of terms or duration of service is otherwise specified in this constitution.

11 Nevada Constitution, Art. 15, §3. In 1996, the Douglas County District Attorney sought an
12 opinion from the Attorney General, specifically seeking, of relevance herein, direction as to
13 which offices the term "local governing body" would apply.⁴ See, Nev. Atty Gen. Op. No. 96-23.
14 With respect to City Council and Mayor term limits the opinion reasoned:

15 An examination of the instrument creating each city is necessary before a
16 conclusion can be reached as to whether a mayor would be subject to term
17 limits. . . . ***If {...} the mayor functions as a member of the city council, a
governing body, then term limits would apply to that position as well as
to the other members of the city council.***

18 [Emphasis Added]. *Id.* at p. 3. That Opinion goes on to reason that "If the mayor is elected, has
19 voting authority, and does not merely preside over council meetings, then the mayor is a
20 ***member of the governing body*** and the number of terms served would be limited." [Emphasis
21 Added]. *Id.* at p. 4. In conclusion, the Opinion holds " . . . ***the limitation will apply to city
council members and those mayors who, by charter, are part of the city council.***" [Emphasis
22 Added]. *Id.* at p. 5.

23 B. The Reno City Charter

24 Recently added in 2013 to clarify the language of the Charter, §1.014 of the Reno City
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⁴ A true and correct copy of that opinion is attached hereto at Exhibit "3."

1 Charter defines "City Council" or "Council" as "the governing body of the City."⁵ See also, AB 9,
2 2013 Legislative Session. Further, §3.010 provides in pertinent part:

3 1. The Mayor:

4 (a) Shall serve as a member of the City Council and preside over its
5 meetings.

6 [Emphasis Added].

7 **C. Jessica Sferrazza and Dwight Dortch are Term Limited**

8 Former City Council member Jessica Sferrazza termed out of her Ward 3 City Council
9 seat in 2012. However in disregarding such term limits, Ms. Sferrazza has publicly announced
10 that she is running for 2014 Mayor of Reno and has further began soliciting and collecting
11 campaign contributions in pursuit of such seat.⁶

12 Current City Council member Dwight Dortch will be termed out of his Ward 4 City
13 Council seat in 2014. Mr. Dortch is also choosing to disregard the Constitutional term limits
14 and he too publicly announced that he is running for 2014 Mayor of Reno and has also began
15 soliciting and collecting campaign contributions in pursuit of such seat.⁷

16 **IV. POINTS AND AUTHORITIES IN SUPPORT OF REQUEST TO ISSUE WRIT**

17 **A. The Nevada Supreme Court has Original Jurisdiction to Issue a 18 Writ of Mandamus**

19 This Court is authorized to issue writs both under Art. 6, §4 of the Nevada Constitution
20 and by statute. NRS 34.160; NRS 34.320. See also, *Employers Ins. Co. of Nevada v. State Bd. of*
21 *Examiners*, 117 Nev. 249, 252, 21 P.3d 628, 630 (2001).

22 A writ of mandamus is available to compel the performance of an act that the law
23 requires as a duty resulting from an office, trust or station, or to control an arbitrary or
24 capricious exercise of discretion. *Brewery Arts Center v. State Bd. of Examiners*, 108 Nev. 1050,
25 1053, 843 P.2d 369, 372 (Nev. 1992); NRS 34.160. A writ of prohibition is available to "arrest
26 the proceedings of any tribunal, corporation, board or person exercising judicial functions,
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28 ⁵ A true and correct copy of AB 9 as enrolled and signed into law by the Governor is attached hereto at Exhibit "4."

⁶ See, Exhibit "5," attached hereto.

⁷ See, Exhibit "6," attached hereto.

1 when such proceedings are without or in excess of the jurisdiction of such tribunal corporation,
2 board or person.” NRS 34.320.

3 The decision to entertain a petition for mandamus is discretionary within this Court.
4 *Redecker v. District Ct. (Mosley)*, 122 Nev. 164, 167, 127 P.3d 520, 522 (2006); See also, *S.*
5 *California Edison v. First Judicial Dist. Court of State of Nevada*, 255 P.3d 231, 234 (Nev. 2011),
6 reh'g denied (Sept. 20, 2011). This Court may consider whether “judicial economy and sound
7 judicial administration militate for or against issuing the writ.” *Id.* at 167. While the issuance of
8 writs is an extraordinary remedy, it is well settled that this Court may grant the relief where the
9 circumstances reveal urgency and strong necessity. *Cote H. v. Eighth Judicial District Court ex*
10 *rel. County of Clark*, 175 P.3d 906, 908 (Nev. 2008).

11 This Court has previously exercised its discretion to hear writ petitions “where an
12 important issue of law requires clarification.” *Redeker*, 122 Nev. at 167, 127 P.3d at 522, Citing,
13 (*State v. Dist. Ct. (Epperson)*, 120 Nev. 254, 258, 89 P.3d 663, 665-66 (2004)).

14 **B. Petitioner May Properly File This Petition**

15 In order to establish standing to bring the present action, Petitioner must demonstrate a
16 beneficial interest in obtaining writ relief, particularly in having a direct and substantial
17 interest that falls within the zone of interests to be protected by the legal duty asserted. See,
18 *Heller v. Legislature*, 120 Nev. 456, 461, 93 P.3d, 746, 749 (2004). The Petitioner herein is a
19 citizen voter of the City of Reno and has also publicly declared his intent to run for Mayor of the
20 City of Reno in the 2014 election and taken all steps available at this juncture to formally
21 declare such candidacy.⁸ As such, Petitioner has a direct and substantial interest, both in not
22 having to contest an election against candidates who are not qualified to be on the ballot, as
23 well as in ensuring that all candidates with whom he, like his fellow citizen voters, choose to
24 support are properly qualified.

25 Mandamus relief is justified here, given the need for prompt resolution of this issue in
26 order to ensure that the election ballots are timely prepared, to ensure that the City of Reno is
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⁸ See, Affidavit of Petitioner, attached hereto at Exhibit “7.”

1 not burdened with costs associated with reprinting ballots if this matter is not decided in time;
2 to ensure that improper absentee ballots are not sent overseas to our troops and elsewhere
3 causing confusion and unnecessary expense; and, to ensure that the citizens of Reno know that
4 their campaign contributions, volunteer time, etc. are going towards candidates who ultimately
5 qualify for reelection.

6 Petitioner herein recognizes and acknowledges that the process for challenging the
7 qualifications of a candidate is codified in NRS 293C.186, which provides that any elector may
8 file a written challenge with the city clerk indicating which qualifications the candidate does
9 not meet. The city clerk must then transmit the challenge to the city attorney, who must review
10 the challenge and determine whether probable cause exists to support the challenge, and
11 determine if a candidate lacks one or more qualifications for the office sought and, if so, order
12 that his or her name be excluded from the ballot. *Id.*

13 However and as set forth herein in more detail, at this time the procedures of NRS
14 293C.186 provide no plain, speedy or adequate remedy in the ordinary course for Petitioner in
15 this case.

16 **C. A Writ or Other Extraordinary Relief is Necessary and Proper**

17 A writ shall be issued in all cases where there is no plain, speedy and adequate remedy in
18 the ordinary course of law. NRS 34.170. It is undisputed that the statutory schedule for
19 elections is a demanding one, allowing limited opportunity for objections, and thus justifying
20 writ relief. As pointed out herein, NRS 293C.182 provides for certain statutory procedures for
21 challenging the qualifications of candidates. However, these statutory procedures available
22 under NRS 293C.182 are not exclusive when it comes to the issue of a candidate's eligibility for
23 office.

24 Candidacy disputes must be resolved promptly so that ballots can be prepared in a timely
25 manner for the voting machines and the mailing absentee and sample ballots and courts have
26 acknowledged that a writ proceeding is the only expedient and adequate remedy. The urgency
27 in the ballot preparation process prompted one court to recognize in a gubernatorial election "a
28 special rule with regard to determining the eligibility of candidates in advance of an election."

1 *State ex rel. Maloney v. McCartney*, 223 S.E2d 607, 616, (W. Va. App. 1976). By this rule:

2 [a]ny person with standing to challenge the candidates eligibility may raise
3 such a challenge...through an action in mandamus, without regard to the
4 statutory times provided to the Secretary [of State] for certain ministerial
5 acts. ***We arrive at this conclusion in order to achieve as expeditious a
6 resolution of the controversy as possible because of the limited time
7 available for the printing of ballots and campaigning by other
8 candidates.***

9 [Emphasis Added]. *Id.*, 223 S.E2d at 617. This is one of the reasons why writ relief is necessary
10 in this case. In fact, the current Reno City Council and local officials have expressed concerns
11 over this very issue. Respondent Jones herein, prepared a Staff Report⁹ wherein she explains
12 the procedure that:

13 Candidates for Mayor will file with the City Clerk from March 3, 2014
14 through March 14, 2014. By March 25, 2014, which is 5 working days after
15 the last day a person may withdraw his or her candidacy, an elector may file
16 a written challenge of the qualifications of a candidate with the City Clerk
17 under NRS Chapters 293 and 293C. The City Clerk is required to provide
18 the challenge to the City Attorney who then has 5 days to determine if there
19 is probable cause supporting the challenge and to file a petition with a court
20 of competent jurisdiction. Since the 5 days expires on Sunday, March 30,
21 2014, the City Attorney would be allowed to file the petition the next day
22 the Court is open or Monday, March 31, 2014.

23 Ms. Jones, the City Clerk who will ultimately receive the very candidacy declarations at issue
24 herein concluded, "The City Clerk must provide the Registrar of Voters for Washoe County
25 complete ballot language for the primary election by March 28, 2014, ***which leaves no time for
26 a court to consider an elector's challenge prior to processing of the names to be included
27 on the ballot.***" [Emphasis Added].

28 Further, this Court in *We the People Nevada ex rel. Angle v. Miller*, 124 Nev. 874, 880, 192
P.3d 1166, 1170 (2008) held a writ will issue when, "... 'an important issue of law needs
clarification and public policy is served by this court's invocation of its original jurisdiction' or
when a writ petition raises an issue that presents an 'urgency and necessity of sufficient
magnitude' to warrant our consideration." (Citations Omitted). In that case this Court was

⁹ See, Staff Report dated September 25, 2013, a true and correct copy of which is attached hereto at Exhibit "8."

asked to issue writ relief determining the constitutionality of a legislative amendment to NRS 295.056(3), which moved the submission deadline for initiative petitions earlier in the year. *Id.*

This Court reasoned:

Indeed, ***this writ petition raises issues of significant magnitude as the resolution potentially has an impact on this year's election as well as future general elections*** because our consideration will resolve the parameters for legislative enactment of a submission deadline. Thus, we conclude that this court's extraordinary intervention in this matter is warranted.

[Emphasis Added]. *Id.* This is applicable to the instant situation in that the issues raised in this writ petition are issues of such significant magnitude they not only have the potential to impact future elections for years to come until such issue is clarified, they also impact the current upcoming 2014 elections.

Moreover, a writ is also appropriate under these circumstances to prevent voter confusion, disenfranchisement of supporters of candidates later determined to be unqualified and the ensuing irreparable harm and cost to the City of Reno that will result from unsettled and incorrectly printed ballots. See, *Bamgrover v. Fourth Judicial dist. Court of State ex rel. County of Elko*, 115 Nev. 104, 110, 979 P2d. 216, 220 (a writ of mandamus as an extraordinary remedy is appropriate to prevent irreparable harm).

Recently, this Court instructed that "where circumstances reveal urgency or strong necessity," or "where an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction," this court may consider entertaining a writ petition. See, *Walker v. Eighth Judicial Dist. Ct.*, 120 Nev. 815, 819, 202 P.3d 787, 790 (2004).

Not only does this issue involve short timeframes with respect to formal objection periods, it also presents the issue of the proper enforcement of terms limits, which are of great significance to all citizens of the City of Reno. The normal or even an expedited course of litigation provided by statute simply cannot produce a timely-enough resolution under the circumstances. Accordingly, it is critical that this Court make a determination as requested herein.

Moreover, many of the subject mayoral candidates and interested parties herein for the 2014 election are relying on an Attorney General Opinion issued in 2008. What is problematic about this is that: 1. A conflicting Legislative Council Bureau Opinion is believed to have been issued in 2011;¹⁰ and, 2. Additions to the Reno City Charter by the 2013 state legislature explicitly clarify the matter and the plain language of that clarification renders the 2008 Attorney General Opinion incorrect as a matter of both law and fact.

In that Opinion issued on October 21, 2008, the Attorney General concluded that the offices of mayor and city council were separate and distinct and that time in office served in one does not count towards term limitations for the other.¹¹ *Id.*

However, more recently in 2011, the Nevada Legislative Council Bureau issued an Opinion that, in effect, completely discounts that 2008 Opinion and concludes that ***term-limited city council members are ineligible to run for mayor.*** [Emphasis Added].¹²

In addition and in light of the 2013 Amendments to the Reno City Charter set forth and enacted into law through AB 9, the prior 2008 Attorney General Opinion, while not binding on this Court anyway, is inaccurate, incorrect and invalid.

This Court has held that relying on an Attorney General Opinion can be problematic in certain instances. For example, in *Canon v. Taylor*, 88 Nev. 89, 493 P.2d 1313 (1972), this Court ruled against city officials even though they relied upon advice of the Attorney General.

Given this continued conflict, the approaching 2014 election and the imminent need to have clarification to avoid ballot misprints, there is a clear urgency and strong necessity to have this issue resolved at the earliest available opportunity.

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¹⁰ Petitioner herein has diligently attempted to obtain a copy of that opinion for clarification of the matters set forth herein from the various state and local officials but thus far has been denied access to such Opinion. See, Affidavit of Petitioner, attached hereto at Exhibit "7."

¹¹ A true and correct copy of that 2008 Nevada Attorney General Opinion is attached hereto at Exhibit "9."

¹² See, Footnote 10 herein.

1 D. **The Language of the Nevada Constitution and the Reno City Charter is**
2 **Clear**

3 Resolution of this petition depends upon the interpretation of Art. 15, §3 of the Nevada
4 Constitution and the Reno City Charter. In discerning the meaning of the relevant portions
5 therein, we look to well-established principles of statutory and constitutional construction. In
6 the context of a writ petition, a statute's interpretation is reviewed de novo. *International Game*
7 *Tech. v. Dist. Ct.*, 124 Nev. 193, 179 P.3d 556, 559 (2008). The rules of statutory construction
8 apply to the interpretation of a constitutional provision. *Harvey v. Dist. Ct.*, 117 Nev. 754, 763,
9 32 P.3d 1263, 1269 (2001).

10 ***Unless ambiguous***, a statute's language is applied in accordance with its plain meaning.
11 [Emphasis Added]. *California Commercial v. Amedeo Vegas I*, 119 Nev. 143, 145, 67 P.3d 328,
12 330 (2003). When the Legislature's intent is clear from the plain language, this Court will give
13 effect to such intention and construe the statute's language to effectuate rather than nullify its
14 manifest purpose. *Sheriff v. Luqman*, 101 Nev. 149, 155, 697 P.2d 107, 111 (1985).

15 Here, the clear and unambiguous language of Art. 15, §3(2) of the Nevada Constitution
16 reads:

17 No person may be elected to any state office or ***local governing body*** who
18 has served in that office, or at the expiration of his current term if he is so
19 serving will have served, 12 years or more, unless the permissible number
20 of terms or duration of service is otherwise specified in this constitution.

21 [Emphasis Added].

22 The language of the Reno City Charter is equally clear. In fact, §1.014 of the Reno City
23 Charter explicitly defines the "***City Council***" or "Council" as "***the governing body of the City.***"
24 See also, AB 9, 2013 Legislative Session. Further, the Reno City Charter also provides:

25 Sec. 2.010 Mayor and City Council: Qualifications; election; term of office;
26 salary.

27 1. The ***legislative power*** of the City is vested in a ***City Council consisting***
28 ***of six Council Members and a Mayor.***

29 ...

30 Sec. 3.010 Mayor: Duties; Assistant Mayor.

31 ***1. The Mayor:***

32 ***(a) Shall serve as a member of the City Council and preside over its***
33 ***meetings.***

1 [Emphasis Added]. The clear language of the Reno City Charter provides that the "city council."
2 which is the **"governing body of the City"** is made up of and includes "six **Council Members**
3 **and a Mayor."** [Emphasis Added]. Reno City Charter, §2.010(1). Still, should there be any
4 question as to the interpretation of the role of the Mayor as a member of the City Council of the
5 local governing body of the City, it is further explicitly defined that the Mayor is "a member of
6 the **City Council."** [Emphasis Added]. Reno City Charter, §3.010(1)(a).

7
8 Accordingly, the Reno City Charter provides that the Mayor is a member of the City
9 Council and that City Council is the governing body of the City. In turn, the unambiguous
10 language of the Reno City Charter makes the application of the term limit language of Article 15,
11 §3 of the Nevada Constitution crystal clear. "No person may be elected to any state office or
12 local governing body who has served in that office, or at the expiration of his current term if he
13 is so serving will have served, 12 years or more ..." [Emphasis Added].

14 In conclusion, no City Council member who has served in the office of the City Council,
15 which explicitly includes the Mayor, for twelve or more years can be elected to that local
16 governing body (the City Council). The plain language of Article 15, §3 of the Nevada
17 Constitution clearly prohibits a person from being re-elected to the governing body as a whole,
18 regardless of which seat the person seeks to serve.

19 This is consistent with the apparent intent behind the term limits amendment. As a
20 matter of public policy, any contrary interpretation would be construed to mean that one
21 would be permitted to serve more than twelve years as a member of the City Council as long as
22 they did not serve more than twelve years in the same seat or ward. Yet, it is undisputed that
23 the legislative intent and purpose of the term limit amendment to the Constitution was not to
24 allow the same individual to serve as a member of the City Council for twelve years in each of
25 the six City Council wards and an additional 12 years as a City Council member as Mayor. Such
26 absurd application would result in a total of 84 years as a member of the Reno City Council.

27 This would completely negate one of the explicit purposes of the term limits
28 amendment, which is to "stop career politicians since no one will be able to hold one office for

1 several terms." See also, 2010 Nev. Op. Atty. Gen. No. 05 (2010).¹³ Another was to reduce the
2 power of lobbyists and special interests "since state officials and local governing body members
3 will only be in office for a limited amount of time." *Id.* Permitting a person to be elected to
4 different seats on the same body, even after serving 12 years or more, would defeat these
5 stated purposes. 2010 Nev. Op. Atty. Gen. No. 05 (2010), Citing (Op. Colo. Att'y. Gen. No. 00-5, p.
6 5 (July 10, 2000)¹⁴).

7 **V. CONCLUSION**

8 Based on the foregoing and any ordered arguments, Petitioner respectfully requests that
9 this Court issue a writ of mandamus or, in the alternative, a writ of prohibition and find that
10 termed out members of the Reno City Council cannot serve additional terms in a different City
11 Council seat as Mayor; and, as such, Jessica Sferrazza and Dwight Dortch are prohibited by the
12 twelve-year term limitation imposed by Art. 15, §3 of the Nevada Constitution from serving
13 additional terms on the Reno City Council as Mayor.

14 DATED this 10th day of October, 2013.

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17 STEPHANIE RICE, ESQ.

18 HARDY LAW GROUP

19 Attorney for George "Eddie" Lorton, Petitioner
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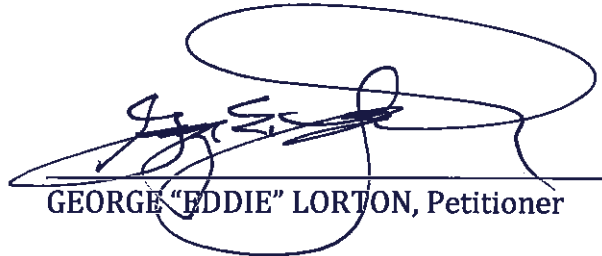
27 ¹³ A true and correct copy of that 2010 Nevada Attorney General Opinion is attached hereto at Exhibit "10."

28 ¹⁴ A true and correct copy of that 2008 Nevada Attorney General Opinion is attached hereto at Exhibit "9."

1 **VI. VERIFICATION**

2 Under penalties of perjury, the undersigned declares that he is the Petitioner in the
3 foregoing Petition for Writ of Mandamus or Other Extraordinary Writ and that I know the
4 contents thereof; that the pleading is true of his own knowledge, except as to those matters
5 stated on information and belief, and that as to such matters, I believe them to be true.

6 Executed this 10 day of October, 2013.

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11 GEORGE "EDDIE" LORTON, Petitioner
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Lynnette Jones, Reno City Clerk
1 E. First Street, 2nd Floor,
Reno, Nevada 89501

Jessica Sferrazza, Real Party in Interest
2713 Robb Drive
Reno, Nevada 89523

DATED this 11th Day of October, 2013.

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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 **GEORGE “EDDIE” LORTON v. LYNNETTE JONES ET AL.**

3
4 **PETITION FOR WRIT OF MANDAMUS OR OTHER EXTRAORDINARY WRIT**

5
6 **EXHIBIT INDEX**

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8 EXHIBIT #	9 DESCRIPTION	10 LENGTH
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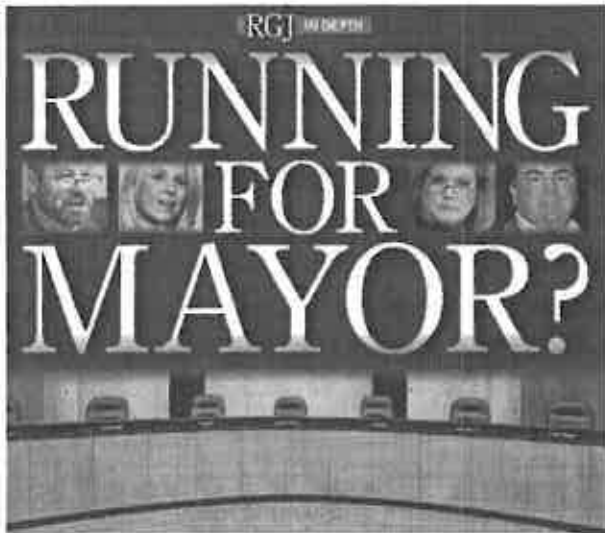
EXHIBIT “1”

EXHIBIT “1”

Running for mayor? Legal question must be settled before term-limited members of Reno City Council can enter race

Written by Ray Hagar
Sep 30

rgj.com



You must be 18 or older
Cannot be a convicted felon
Cannot be convicted of treason
Cannot be adjudicated mentally incompetent
Citizen of the United States
Must be a resident of the City of Reno for at least 30 days prior to the last date for candidate filing, which is 5 p.m. March 14
Your Reno address must be your primary residence
You must pay \$35 to file for office
You must be willing to give up your job or office at the city of Reno or Washoe County if you win.

WHAT IT TAKES TO RUN FOR MAYOR

Candidates must be qualified electors to lead the city of

Reno. That means:

Eddie Lorton, a Reno businessman and declared candidate for mayor of Reno, is angry with some of the people he may face in the 2014 election.

Five current and former members of the Reno City Council are barred by term limits from serving again, and four have shown interest in running for mayor in 2014.

Lorton contends that state law and the Reno City Charter say the mayor is a member of the City Council. Therefore, those term-limited council members are not eligible to run.

Lorton said he plans to file a lawsuit "very soon."

"I just can't take these people," Lorton said in a recent interview. "Here they are, already serving 12 years, trying to get back in again. Not only is it illegal, it's also morally wrong. Even the president of the United States has term limits."

Reno Mayor Bob Cashell agrees the 2014 election to pick his successor has potential problems.

Cashell, who is term-limited himself, wants a judge to rule on the eligibility of the termed-out council members.

The people in question include current members Sharon Zadra and Dwight Dortch plus former members Jessica Sferrazza and Dave Aiazzi, who's now a Washoe County School Board trustee. Former Councilman Pierre Hascheff, now a municipal judge, has not indicated he's

considering a bid for mayor.

For the citizens, it is best to ask the court soon to give us an opinion," Cashell said last week.

Cashell wants the issue settled before candidates file in March 2014 and the ballots are printed. If the candidates' eligibility is decided too late, the city could be stuck with the cost and confusion of reprinting ballots and reprogramming voting machines.

Campaign plans and candidate financing also hinge on a judge's ruling, Cashell said.

"You would think people running campaigns would want to know soon," Cashell said.

"Who is going to donate to their campaigns if people don't know who can play and who can't play?" he said.

"The voters, they don't want to find out at the last minute, after we've printed the ballots and sent them (to troops) overseas," Cashell said. "Then, we'll have to go out and cancel them at the last minute."

The two council members who are considering a run certainly want the issue clarified.

"We need to know because we have to submit the information for the printing of the ballot, and that's really a time-sensitive issue," Zadra said. "The driving point is knowing what is legal."

Added Dortch: "We've had a few people during public comment say that they are going to challenge it once the election comes around.

"But my attitude is, it would be better finding out sooner than finding out later."

Differing legal opinions

Two Nevada legal opinions have addressed the issue, Cashell said. And they contradict each other.

One, from the Nevada Attorney General in 2008, says it is OK for term-limited council members to run for mayor.

Another, conducted by the Nevada Legislative Counsel Bureau in 2011, said they can't.

While the Attorney General's Office said the mayor and the six members of the Reno City Council are separate positions, the state Legislature's legal staff argued the mayor and City Council members are part of the same local government body.

In other words, term-limited council members are ineligible to run for mayor.

Richard Combs, the executive director of the LCB, said he could not confirm the opinion was

given, citing attorney-client privileges.

Meanwhile, the Reno Gazette-Journal independently confirmed that the opinion had been given to a Northern Nevada lawmaker.

Cashell and Reno City Councilwoman Neoma Jardon also confirmed its existence.

"Opinions are just that — opinions," Jardon said. "The LCB opinion came out and said they (council members and mayor) are the same. Then the attorney general ruled no, they are distinctive. You literally have two opinions that are just that."

"So, in order to get clarity, it has to go to a judge," Jardon said. "Again, I'd rather have that clarity now and not have our voters confused."

Jardon said it is important to note that the City Council is not advocating for any candidates when they advocate for a ruling clarifying who is eligible to run.

"I just want to make sure from the city's standpoint that we can and will be heard from a position of neutrality," Jardon said. "We are not advocating for or against it. We are saying, let's just have a judge give us some clarity."

Jardon and Cashell are concerned that the issue won't be decided in a timely fashion, especially if a judge requires that only a filed candidate for mayor can bring suit. Filing starts March 3 and ends at 5 p.m. March 14.

"Some people say that you have to have a dog in the hunt or you can't file suit like that," Cashell said. "But I don't see why you can't ask the court to rule if a term-limited person on the City Council can run for mayor or not. Let's get a ruling, clear it up for the citizens because they don't know."

Game changer

A ruling could dramatically affect the future leadership of Reno, said Eric Herzik, dean of the political science department at the University of Nevada, Reno.

One of the termed-out council members will probably win the election, he said. If a judge rules they can't run, then the race turns on its head.

"The experienced council people would be the favorites in the race," Herzik said. "They would likely win. So if you take them out, it completely changes the dynamic."

"Also, some potential candidates have stayed out of seriously pursuing the race, because they have to look at facing a Sferrazza or a Dortch, who have money, name recognition and more organization. But you take them out, the field is wide open."

If a term-limited council member is elected mayor, it won't be the first time it has happened in Nevada.

Henderson Mayor Andy Hafen was elected in 2009 after serving as a member of the Henderson City Council since 1987.

The opposition

Two members of the City Council do not want Reno to ask a judge for a ruling because they don't want to get the city involved in a political issue.

"This question of eligibility applies to five people, and I just don't think it is really the city's job to get involved and pursue this avenue," Councilwoman Jenny Brekhus said. "This is a question about the interpretation of our charter. And the irony is that these people had six legislative sessions before now to have questions about the charter."

Brekhus and Councilwoman Hillary Schieve opposed the city's involvement earlier this month. The two-vote minority was enough to block any city action on the issue.

That's because both Dortch and Zadra could not vote on the matter because they may run for mayor, leaving just three members of the City Council in favor of asking a judge for a ruling — not enough to clear the seven-member body's four-vote majority needed to approve the measure.

Dortch said he did not know why Schieve and Brekhus would be in opposition.

"You would have to ask them that because it didn't make sense to me," he said. "I still think you'd want to clarify, the sooner the better."

Because two members cannot vote on the matter, the Reno City Attorney may issue an opinion to reduce the number of votes needed pass the measure from four to three. The City Council postponed the issue at its meeting last week.

"Would we even be having this conversation if the people on this council were not running for mayor?" Schieve said. "This is a policy agenda decision. This is not the job of city hall. I don't want to spend taxpayers' money. If they want their opinions, they should spend their own money to get them."

When council members use tax money as an excuse for not seeking a legal opinion, it makes Lorton wince.

"They selectively choose when money is an issue and when it is not," Lorton said.

Lorton said he wants to file the lawsuit before the city does, though he acknowledges if he files the lawsuit, the outcome may be different if the city ultimately gets an opinion from a judge.

"I don't want the city doing it, with its own biased opinions," Lorton said.

"I'm forced into doing it," Lorton said. "I don't want to do it, but I want to do it way in advance (of filing for election). I want the citizens to have a fair opportunity."

He promised action "soon."

What about the voters?

It is prudent for Reno to seek a legal opinion, said Fred Lokken, a political science professor at Truckee Meadows Community College. Yet if the underlying motive is to block "career politicians" from seeking office, that's wrong.

"Really, it is the voters that decide if these individuals seem like career politicians or if their experience in office is something that they are looking for. That is not for a judge to decide. I'd argue that this is an issue for the ballot box."

"There are times that voters may feel that someone who has served for a while, during difficult times, really contributes something," Lokken said. "They may prefer that to the approach of electing someone who is brand-new and is going to be involved in on-the-job training for up to a year or more, while major issues are brewing."



EXHIBIT “2”

EXHIBIT “2”

NEVADA
BALLOT QUESTIONS
1994



A compilation of ballot questions which will appear
on the November 8, 1994, Nevada
general election ballot

Issued by
CHERYL A. LAU
Secretary of State

QUESTION NO. 9

An Initiative Relating to Term Limits for State and Local Public Officers

CONDENSATION (ballot question)

Shall the Nevada Constitution be amended to establish term limits for state and local public officers?

Yes..... ☐

No..... ☐

EXPLANATION

Other than the office of governor, the Nevada Constitution currently places no limits on the number of terms to which state and local officers can be elected. This amendment would limit members of the state Assembly to serving twelve (12) years or six (6) terms in office. Members of the state Senate would be limited to serving twelve (12) years or three (3) terms in office. Justices of the Supreme Court, justices of the peace, and all other judges would be limited to two (2) terms. The Secretary of State, State Treasurer, State Controller, and the Attorney General would be limited to eight (8) years or two (2) terms. Other state officials and local governing body members would be limited to twelve (12) years. Appointment to an office for any amount of time would be equal to one (1) term.

ARGUMENT FOR PASSAGE

Proponents argue that passage will stop career politicians since no one will be able to hold one office for several terms. Passage may lessen the power of lobbyists and special interest groups since state officials and local governing body members will only be in office for a limited amount of time. State officials and local governing body members would have the opportunity to focus on the issues instead of reelection. A greater number of Nevadans would be allowed to serve as state officials and as members of local governing bodies.

ARGUMENT AGAINST PASSAGE

Opponents argue that it may be difficult to get qualified candidates to run for an office if the term of that office is limited. Experienced state office holders and members of local governing bodies will not be allowed to run for reelection; nor will those who have done a good job and been responsive to the voters. During the state or local officials' final term, the official will not be accountable to the voters during that term, since that official cannot be reelected. This amendment does not consider that Nevada currently has a citizen legislature which meets only once every two years; consequently, the current turnover in the state legislature is quite high.

FISCAL NOTE

Fiscal Impact-No. The proposal to amend the Nevada Constitution would limit the terms of State and Local Officers. The proposal would have no adverse fiscal impact.

FULL TEXT OF THE MEASURE Initiative to Limit Terms of State and Local Officers

The People of the State of Nevada do enact as follows:

Section 1. Section 3 of article 4 of the constitution of the State of Nevada is hereby amended to read as follows:

[Sec:] Sec. 3. 1. The members of the Assembly shall be chosen [biennially] *biennially* by the qualified electors of their respective districts, on the Tuesday next after the first Monday in November and their term of office shall be two years from the day next after their election.

2. *No person may be elected or appointed as a member of the Assembly who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, from any district of this state.*

Sec. 2 Section 4 of article 4 of the constitution of the State of Nevada is hereby amended to read as follows:

[Sec:] Sec. 4. 1. Senators shall be chosen at the same time and places as members of the Assembly by the qualified electors of their respective districts, and their term of Office shall be four Years from the day next after their election.

2. *No person may be elected or appointed as a Senator who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, from any district of this state*

Sec. 3. Section 19 of article 5 of the constitution of the State of Nevada is hereby amended to read as follows:

[Section] Sec. 19. 1. A secretary of state, a treasurer, a controller, and an attorney general, shall be elected at the same time and places, and in the same manner as the governor. The term of office of each shall be the same as is prescribed for the governor.

2. Any elector shall be eligible to [either of said] *any of these offices[.]*, but no person may be elected to any of them more than twice, or more than once if he has previously held the office by election or appointment.

Sec. 4 Section 11 of article 6 of the constitution of the State of Nevada is hereby amended to read as follows:

Sec. 11. 1. The justices of the supreme court and the district judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected or appointed; and all elections or appointments of any such judges by the people, legislature, or otherwise, during said period, to any office other than judicial, shall be void.

2. *No person may be elected a justice of the supreme court, judge of any other court, or justice of the peace more than twice for the same court, or more than once if he has previously served upon that court by election or appointment.*

Sec. 5. Section 3 of article 15 of the constitution of the State of Nevada is hereby amended to read as follows:

[Section] Sec. 3. 1. No person shall be eligible to any office who is not a qualified elector under this constitution.

2. *No person may be elected to any state office of local governing body who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, unless the permissible number of terms or duration of service is otherwise specified in this constitution.*

EXHIBIT “3”

EXHIBIT “3”

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

OPINION NO. 96-23 ELECTIONS; LOCAL GOVERNMENT; PUBLIC OFFICERS: If voters approve term limits for state and local officials in November 1996, only periods of service commencing after November 27, 1996, will be counted as a term for limitation purposes. "Local governing body" is defined and local offices evaluated to determine to which ones term limits will apply.

Carson City, August 9, 1996

The Honorable Scott W. Doyle, Douglas County District Attorney, Post Office Box 218, Minden, Nevada 89423

Dear Mr. Doyle:

You have requested an opinion from this office regarding term limits for state and local public officials.

BACKGROUND

In 1994 an initiative petition proposing to amend the Nevada Constitution to limit terms for various state and local public officers qualified for the general election ballot. This ballot measure was identified as Question 9. The full text of the petition follows. Voters at two consecutive elections must approve such a ballot question before it becomes law. Nev. Const. art. 19, § 2(4). Voters in the 1994 general election approved Question 9.¹ Voters must again approve this question in the 1996 general election for it to be effective.² Since 70 percent of the voters approved the question in

¹ The 1994 General Election Returns supplied by the Secretary of State at page 12 indicates 259,211 votes in favor of Question 9 and 108,780 votes against.

² If a majority of voters approve the ballot question, it will become part of the Nevada Constitution upon completion of the canvass of votes by the Nevada Supreme Court. The canvass will be conducted on November 27, 1996. Nev. Const. art 5, § 4; NRS 293.395(2).

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

1994, the issues raised in this opinion request are relevant, as the probability of the question passing in 1996 is high.³

The initiative proposes to limit terms of service of three groups of elected officials: all state officers, all judges, and certain local officials. The language of the initiative is clear that all state officers and all judges are included. However, the language is not clear as to which local officials are included.

In drafting the explanation and arguments for and against passage that appear on the ballot, general and inclusive language was used to inform the voters that state and local public officers were subject to the term limitations of the initiative. Since local judges as well as members of local governing bodies would be affected by the initiative, the general term local public officers was used. Also, the initiative petition filed with the Secretary of State is entitled "Initiative to Limit Terms of State and Local Officers." The question then becomes which local public officers would be subject to term limitations if the voters again approve the ballot question.

The full text of the initiative petition as filed with the Secretary of State pursuant to NRS 295.015 is as follows:

INITIATIVE TO LIMIT TERMS OF STATE AND LOCAL OFFICERS

EXPLANATION -- Mater is italics or underscored is new;
matter in brackets[] is material to be omitted.

The People of the State of Nevada do enact as follows:

³ The Nevada Judges Association (Association) filed a lawsuit in 1995 to remove from the ballot that portion of the question pertaining to justices of the supreme court, district judges, and justices of the peace. The Nevada Supreme Court denied the relief the Association sought, but split the initiative into two questions: one pertaining to supreme court justices, district court judges, justices of the peace, and all other judges; and the other, to the other affected elected officials. *Nevada Judges Ass'n v. Lau*, 112 Nev. 51, 910 P.2d 898 (1996). The court in a footnote clarified: "If either proposal passes in the 1996 general election, the Constitution will be effectively amended as to the proposal or proposals receiving a majority vote." *Id.* 112 Nev. at 904, n.2. The Association petitioned for a rehearing arguing the divided question pertaining to judges required passage in two general elections before it could be effective. The court denied the rehearing confirming its previous determination that either part of the question only needs to be approved by the voters in the 1996 general election. *Nevada Judges Association v. Lau*, No. 26177 (Nev. Apr. 30, 1996) (order denying rehearing).

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

Section 1. Section 3 of article 4 of the constitution of the State of Nevada is hereby amended to read as follows:

[Sec:] Sec. 3. 1. The members of the Assembly shall be chosen [biennially] biennially by the qualified electors of their respective districts, on the Tuesday next after the first Monday in November and their term of office shall be two years from the day next after their election.

2. No person may be elected or appointed as a member of the Assembly who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, from any district of this state.

Sec. 2. Section 4 of article 4 of the constitution of the State of Nevada is hereby amended to read as follows:

[Sec:] Sec. 4. 1. Senators shall be chosen at the same time and places as members of the Assembly by the qualified electors of their respective districts, and their term of Office shall be four Years from the day next after their election.

2. No person may be elected or appointed as a Senator who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, from any district of this state.

Sec. 3. Section 19 of article 5 of the constitution of the State of Nevada is hereby amended to read as follows:

[Section] Sec. 19. 1. A secretary of state, a treasurer, a controller, and an attorney general, shall be elected at the same time and places, and in the same manner as the governor. The term of office of each shall be the same as is prescribed for the governor.

2. Any elector shall be eligible to [either of said] any of these offices[.], but no person may be elected to any of them more than twice, or more than once if he has previously held the office by election or appointment.

Sec. 4. Section 11 of article 6 of the constitution of the State of Nevada is hereby amended to read as follows:

Sec. 11. 1. The justices of the supreme court and the district judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected or appointed; and all elections or appointment to any such judges by the people, legislature, or otherwise, during said period, to any office other than judicial, shall be void.

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

2. No person may be elected a justice of the supreme court, judge of any other court, or justice of the peace more than twice for the same court, or more than once if he has previously served upon that court by election or appointment.

Sec. 5. Section 3 of article 15 of the constitution of the State of Nevada is hereby amended to read as follows:

[Section] Sec. 3. 1. No person shall be eligible to any office who is not a qualified elector under this constitution.

2. No person may be elected to any state office or local governing body who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, unless the permissible number of terms or duration of service is otherwise specified in this constitution.

QUESTION ONE

To which offices does the term "local governing body" as used in section 5 of the proposed initiative apply?

ANALYSIS

Section 5 of the initiative proposes to amend section 3 of article 15 of the Nevada Constitution by adding language to limit the number of terms members of local governing bodies may serve. However, the initiative does not define "local governing body."

Courts from various jurisdictions provide guidance. The Minnesota Court of Appeals stated "it is the power to decide, as opposed to the right to recommend, that determines whether one is a member of a governing body." *Blaine v. Anoka-Hennepin Independent School District*, 498 N.W.2d 309, 314 (1993). See also *Minnesota Education Association v. Bennett*, 321 N.W.2d 395 (1982). The Supreme Court of Georgia in one case described a governing body as a policy-making apparatus. *City of Cave Spring v. Mason*, 310 S.E.2d 892, 893 (1984). In another case, the Supreme Court of Georgia identified a governing authority with performing legislative functions. The Supreme Court of Florida agrees a governing body would have the last word concerning policies. *Metro-Dade Fire*

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

Rescue Service District v. Metropolitan Dade County, 616 So.2d 966 (1993).

The Supreme Court of Virginia characterizes a governing body as having the authority to legislate by ordinance. *Laird v. City of Danville*, 302 S.E.2d 21 (1983). The Supreme Court of Texas agrees a governing body exercises legislative powers. *Burch v. City of San Antonio*, 518 S.W.2d 540 (1975). The Superior Court of New Jersey also equates governing body with legislative functions. *Mentus v. Town of Irvington*, 191 A.2d 806 (1963).

After reviewing these court decisions, it is our opinion a governing body performs legislative functions, makes policy for the jurisdiction it governs, and makes decisions as opposed to making recommendations. Applying this definition, we evaluated many different local boards to determine which are governing bodies whose members would be subject to the term limitations.

Term limits clearly apply to members of a county commission, board of supervisors, or a city council since these bodies are local governing bodies. The Supreme Court of Delaware, in an unreported case, characterized the New Castle County Council as the legislative governing body of the county. *Riley v. Moyed*, 1986 WL 8169 (Del. July 22, 1986).

It is also equally clear, term limits would not apply to other elected county officials, such as county clerk, recorder, sheriff, treasurer, assessor, district attorney, and public administrator, since they are not members of governing bodies. The same conclusion applies to elected city attorneys, city clerks, and city treasurers⁴, as well as township constables.⁵ The Minnesota Supreme Court in *McGuire* stated the city attorney is not part of the governing body. *McGuire v. Hennessy*, 193 N.W.2d 313 (1971). Pursuant to various enabling statutes, these elected officials discharge their duties individually or with the assistance of deputies and staff. See NRS

⁴ If a city has an auditor who is elected, that auditor would not be subject to term limits.

⁵ Term limits would apply to justices of the peace and elected municipal court judges pursuant to section 4 of the initiative petition.

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

246.060; 246.030; 247.060; 247.030; 248.090; 248.040; 249.090; 249.010; 249.060; 250.010; 250.060; 252.110; 252.070; 253.040; 253.025; 258.070; 258.060; 266.405; 266.470; 266.480; 266.500; and 266.455. The nature of these offices does not involve a governing body in performance of duties and therefore, these officers are not subject to the proposed constitutional term limitations.

However, if an elected official is a member of a group whose function is to govern, that is to control, direct, or exercise authority over others, or perform legislative or policy making decisions, then that officer would be subject to the term limitations.

The office of mayor and other local boards are more difficult to analyze. It is not clear whether mayors are included, nor is it clear which boards within a county would be affected. Mayors have both executive and legislative duties. Cf. NRS 266.165; 266.190; and 266.200. An examination of the instrument creating each city is necessary before a conclusion can be reached as to whether a mayor would be subject to term limits. If the creating instrument indicates the mayor's main function is to be an administrator for the city, and the mayor does not exercise legislative power as a member of the city council, then the mayor would not be subject to term limits. If, on the other hand, the mayor functions as a member of the city council, a governing body, then term limits would apply to that position as well as to the other members of the city council.

Cities can be created either by special charter or by general law. Nev. Const. art. 8, §§ 1, 8. General law cities have the authority to create the office of city manager. NRS 266.390(1). These city managers can have the duties of chief administrator for the city. If such is the case, the duties performed by the mayor are more legislative in nature, that is, to preside over city council meetings and exercise legislative power as a member of the council. Therefore, the proposed term limitations would apply to mayors of general law cities if the office of city manager has been created and the city manager is the chief administrator for the city. In general law cities with no city manager and the mayor's duties are executive in nature (i.e., mayor is not voting member of council), the proposed term limitation would not apply.

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

The charters of cities created by special charter must be examined on a city by city basis. If the mayor is appointed, instead of elected, then the mayor is not subject to term limits. If the mayor is elected, has voting authority, and does not merely preside over council meetings, then the mayor is a member of the governing body and the number of terms served would be limited. In those cities, the mayor is part of the governing body that discharges legislative duties for the city.

Carson City is unique in that it is a consolidated city and county government with features comparable to both cities and counties. The functions performed by members of the board of supervisors and the mayor are legislative in nature, so the proposed initiative would apply to both the board members and the mayor.

If members of a town board are elected and perform legislative duties comparable to those in municipalities, then such members would be subject to term limitations. Citizen advisory council members would not be subject to the limitation since such offices are appointive and merely advisory. The same conclusion applies to town advisory boards if the members are appointed.

However, if members of a town advisory board are elected, they would be subject to term limits. We reach this conclusion even though the board may be denominated the "town *advisory* board" since such a board may often have the same attributes as a local governing body. By statute, a town advisory board may be responsible for providing and managing many town services, may control expenditures, and may have the authority to promulgate town bylaws and codes as well as acquire, manage, and improve town property. See NRS 269.575; 269.580; 269.590; 269.595; 269.600; 269.610; and 269.620.

Elected trustees of county school districts would be included in the term limitation due to the nature of the responsibilities they discharge pursuant to NRS 386.350 and the fact that school districts are political subdivisions pursuant to NRS 386.010(2). "Elected members of a county board of education are 'members of the legislative body of [a] political subdivision . . .'" *West Virginia v. West Virginia Public Employees Retirement System*, 401 S.E.2d 916, 918 (1991).

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

Statutory authority exists for creation of other local districts. The test to determine whether term limits will apply to the directors of such districts is two-fold: (1) Are the directors elected? and (2) Is the function of the directors legislative in nature? Examples of these types of boards include: districts created pursuant to the Nevada Improvement District Act, NRS 309.050 and 309.070; general improvement districts, NRS ch. 318; boards of hospital trustees and district hospitals, NRS ch. 450; county fire protection districts and districts for the control of floods, NRS ch. 474. An example of a board to which term limits would not apply is an irrigation district.

NRS ch. 539 authorizes creation of irrigation districts. If such a district is created, it is to be administered by elected directors. NRS 539.045. However, the Nevada Supreme Court has characterized an irrigation district as a "public corporation" and elaborated that "[t]he district is not established for political or governmental purposes." *In re Walker River Irrigation District*, 44 Nev. 321, 339, 195 P. 327, 335 (1921). Subsequent courts have agreed with this reasoning. See *Truckee-Carson Irrigation Dist. v. McLean*, 49 Nev. 278, 287, 245 P. 285, 294 (1926); *Truckee-Carson Irrigation Dist. v. Barber*, 80 Nev. 263, 266, 392 P.2d 46, 49 (1964).

If such a district has no governmental purpose, then it cannot be a local government for purposes of the term limitation petition and its directors would not be members of a local governing body. This conclusion is supported by *State of Nevada Employees Ass'n, Inc.* which requires liberal construction in favor of the right of the voters to exercise their electoral choice. *State of Nevada Employees Ass'n v. Lau*, 110 Nev. 715, 720, 877 P.2d 531, 535 (1994).⁶

Elected members of the State Board of Education would be subject to the 2-term limitation pursuant to the language in section 5 of the initiative petition that includes other state elected officials. NRS 385.021(6) currently imposes a limitation of three terms upon members of this state board; however, the exemption granted in section 5 of the petition is only for those offices where the term is already limited by the Nevada Constitution, like the position of governor.

⁶ This case is discussed more fully in the analysis to the second question of this opinion.

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

Members of the board of regents would also be subject to the term limitation under the "any state office" limitation in section 5 of the initiative petition.

If a question arises concerning an elected local position which is not resolved by the guidelines provided above, this office will issue a supplemental opinion upon request of the district attorney or city attorney.

CONCLUSION TO QUESTION ONE

The initiative will apply to county commissioners for the reasons that they are elected and perform a legislative function as members of the county commission, a "local governing body." The petition will not limit terms of service of the county clerk, recorder, sheriff, treasurer, assessor, district attorney, and public administrator because they do not perform legislative functions as part of a "local governing body."

The initiative will also apply to city councils and to mayors in general law cities where city managers have been appointed, but not to mayors in general law cities where no city manager has been appointed and the mayor exercises only executive functions. The petition will not limit terms of service of city attorneys, city clerks, and city treasurers. Nor will it limit terms of township constables.

For special law cities, the limitation will apply to city council members and those mayors who, by charter, are part of the city council.

Members of an elected town board would be subject to term limitations, but advisory board members would not, if they are appointed, not elected. If advisory board members are elected and perform legislative functions, term limits would apply.

For other districts, the test is whether the directors are elected and whether the function of the directors as a board is legislative in nature. If the answer to both of these questions is yes, then term limits would apply. An exception to this is an irrigation district.

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QUESTION TWO

How will limitations on elective service be construed and applied should the initiative be approved by the voters in the general election in November 1996?

ANALYSIS

If this measure is approved in November, limitations on terms of elective service for most state and many locally elected officials will be placed in the Nevada Constitution. To answer this second question, two issues must be resolved: (1) When does the initiative go into effect? and (2) Which terms of office will be counted under the proposed limitations on service?

The issue of when the initiative goes into effect is controlled by a 1977 opinion issued by the Nevada Supreme Court. In *Torvinen v. Rollins*, 93 Nev. 92, 560 P.2d 915 (1977), the court addressed a similar question regarding the effective date of a constitutional amendment approved by the voters extending the term of office for district court judges.

In *Torvinen* the lower court ruled the amendment applied retroactively to all judges holding office at the time it was adopted, thereby extending their 4-year terms to six years. *Id.* at 93. The supreme court reversed, holding "the amendment applies prospectively only to elections held after its effective date." *Id.* at 94.

The supreme court reasoned:

We therefore determine a constitutional amendment adopted pursuant to article 16 becomes effective upon the canvass of the votes by the supreme court. This provides uniformity for the effective date of amendments adopted pursuant to article 16 and those adopted pursuant to the initiative procedures of article 19, which specifically mandates such amendments "become a part of this constitution upon completion of the canvass of voters by the supreme court." Nev. Const. Art. 19 §2.

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As a general rule, a constitutional amendment is to be given only prospective application from its effective date unless the intent to make it retrospective clearly appears from its terms. Here, the amendment is void of any term indicating the legislature or electorate intended retrospective application.

Id. (citations omitted). Accordingly, if the voters approve this term limitation initiative, the provisions will go into effect on the day of the canvass, November 27, 1996.

The *Torvinen* case also assists in analyzing the second issue in this question: Which terms of office will be counted under the proposed limitations on service?

The court in *Torvinen* applied the general rule that "a constitutional amendment is to be given only prospective application from its effective date unless the intent to make it retrospective clearly appears from its terms." *Id.* The court had previously stated "statutes are presumed to operate prospectively and shall not apply retrospectively unless they are so strong, clear and imperative that they can have no other meaning or unless the intent of the legislature cannot be otherwise satisfied." *Holloway v. Barrett*, 87 Nev. 385, 390, 487 P.2d 501, 506 (1971).

An examination of the language of the term limitation initiative reveals the petition is not clear as to when the tenure limitations start. In fact, it is vague and ambiguous on the point of when to begin counting terms. The Arkansas Supreme Court in *U.S. Term Limits, Inc. v. Hill*, 872 S.W.2d 349, 360 (1994) *aff'd* *U.S. Term Limits, Inc. v. Thornton*, ___ U.S. ___, 115 S. Ct. 1842 (1995)⁷, noted several other states have adopted term limitation amendments and provided a date certain from which terms will be counted:

⁷ *Hill* addressed term limitations for state and congressional officers. The U.S. Supreme Court granted certiorari, but limited its review to the issue of term limits for congressional officers.

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--State of Washington. Wash.Rev.Code § 29.15.240 (Supp.1993) (no terms served before November 3, 1992, may be used to determine eligibility to appear on the ballot) (approved Nov. 3, 1992).

--State of California. Cal. Const. art. XX, § 7 (applies to terms of state constitutional officers and legislators where the official was elected or appointed to the office after November 6, 1990) (adopted Nov. 6, 1990).

. . . .

--State of Colorado. Colo. Const. art. XVIII, § 9a (applies to terms of office in Congress beginning on or after January 1, 1991) (approved Nov. 6, 1992).

--State of Wyoming. Wyo.Stat. §§ 22-5-103, 22-5-104 (1992) (terms of service in state offices and in Congress prior to January 1, 1993, shall not be counted) (approved Nov. 3, 1992).

Nevada's term limits initiative does not provide a date after which terms of service will be counted, although it easily could have stated that it applies to all prior terms of service.

The court in *Hill* concluded only periods of service commencing on or after the effective date of the amendment would be counted as a term for limitation purposes. *Id.* at 361. Besides applying the rule of statutory construction that constitutional amendments operate prospectively unless the language used or the purpose of the provision indicates otherwise, the court also reasoned "with respect to an amendatory act the legislation will not be construed as retroactive when it may be reasonably construed otherwise. The same rule of construction is equally applicable to a constitutional amendment." *Id.* at 361 (citations omitted); *see also State v. Dovey*, 19 Nev. 396, 399 (1885).

Since the initiative fails to include specific language indicating it is intended to be retroactive in effect, it must be applied prospectively. This is especially apparent in light of the Nevada Supreme Court holding: "The right to hold public office is one of the valuable rights of citizenship. The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office. *Gilbert v. Breithaupt*, 60 Nev. 162, 165-66, 104 P.2d 183, 185 (1940)." *Nevada Judges Ass'n*, 112 Nev. at 54.

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In 1994, the court addressed the term limitation provision imposed on the governor by article 5, section 3 of the Nevada Constitution. In holding a governor who had served two "years" of another governor's term was eligible for reelection since "years" as used in the constitution referred to "official years" rather than "calendar years," the court stated:

Most importantly, we conclude that the people's ability to choose a governor should not be restricted by an ambiguous provision. Petitioners should prevail only if the phrase "years of a term" cannot possibly refer to anything other than "calendar years." If a constitutional provision is capable of being understood in two or more senses by reasonably informed persons, it must be liberally construed in favor of the right of the voters to exercise their electoral choice:

The right to hold public office is one of the valuable rights of citizenship. The exercise of this right should not be declared prohibited or curtailed except by plain provisions of law. Ambiguities are to be resolved in favor of eligibility to office "Statutes imposing qualifications should receive a liberal construction in favor of the right of the people to exercise freedom of choice in the selection of officers." *Gilbert v. Breithaupt*, 60 Nev. 162, 165-66, 104 P.2d 183, 185 (1940) (quoting 46 C.J.S. *Officers* Sec. 32 at 937 (1928)).

State of Nevada Employees Ass'n v. Lau, 110 Nev. 715, 720, 877 P.2d 531, 535 (1994) (citations omitted).

Since the effective date of the petition would be November 27, 1996, the term limitations will not apply to affected officials elected in the 1996 general election. If approved, term limits would be in effect for the 1997 municipal elections, and the 1998 primary and general elections, and so on.

CONCLUSION TO QUESTION TWO

If the voters approve the Initiative to Limit Terms of State and Local Officers in the general election in November 1996, only periods of service

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commencing after November 27, 1996, will be counted as a term for limitation purposes.¹

FRANKIE SUE DEL PAPA
Attorney General

By: KATERI CAVIN
Deputy Attorney General

¹ Officials elected at the general election on November 5, 1996, but who take office at a later date, are not affected by this opinion.

EXHIBIT “4”

EXHIBIT “4”

Assembly Bill No. 9—Committee
on Government Affairs

CHAPTER.....

AN ACT relating to the City of Reno; making various changes to the provisions of the Charter of the City of Reno relating to the Mayor, Assistant Mayor, City Council, City Manager and Civil Service Commission; providing for the creation and duties of a Charter Committee; authorizing the City Council to establish additional appointive positions for officers and employees of the City; repealing certain provisions relating to employment in the Civil Service System and authorizing the Civil Service Commission to provide for such matters by rule; making various other changes to the Charter; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill amends various provisions of the Charter of the City of Reno. **Sections 1 and 2** of this bill adopt certain definitions and rules of construction applicable to the Charter as a whole. **Section 1.5** of this bill provides for the creation, membership and duties of a Charter Committee to make recommendations to the City Council regarding amendments to the Charter. **Section 6** of this bill expands the prohibition against holding other employment or another office, which is applicable to the Mayor or a Council Member. **Section 9** of this bill provides that certain provisions applicable to appointive officers also apply to appointive employees of the City. **Section 15** of this bill authorizes the Mayor and any Council Member to waive the payment of any part of the salary or benefits otherwise payable to him or her and establishes the requirements for such a waiver. **Section 27** of this bill prohibits the Mayor and Council Members from giving orders to any subordinate of the City Manager, or otherwise dealing directly with such a person.

The existing provisions of the Charter permit the City Council to establish additional departments in the Municipal Court and thereby increase the number of Municipal Judges. (Reno City Charter § 4.010) **Section 28** of this bill prohibits the Council from reducing the term of office of any Municipal Judge.

Sections 31 and 32 of this bill revise provisions relating to the general city election to clarify that the election is to occur concurrently with the statewide general election. **Section 34** of this bill establishes a procedure for determining a tie vote in any city election.

Under existing law, various provisions governing the examination, appointment and transfer of employees in the Civil Service System are codified in the Charter. (Reno City Charter §§ 9.090, 9.190-9.250) **Section 47** of this bill repeals those provisions, and **section 43** of this bill provides that such matters are to be governed by the rules of the City's Civil Service Commission. **Section 44** of this bill expands the list of characteristics that may not affect appointment to or removal from a position in the Civil Service.



EXPLANATION - Matter in *italics* is new; matter between brackets *[repealed]* is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, at page 1962, is hereby amended by adding thereto new sections to be designated as sections 1.011, 1.012, 1.013, 1.014, 1.015, 1.016, 1.017, 1.018 and 1.019, respectively, immediately following section 1.010, to read as follows:

Sec. 1.011 Definitions. As used in this Charter, unless the context otherwise requires, the words and terms defined in sections 1.012 to 1.018, inclusive, have the meanings ascribed to them in those sections.

Sec. 1.012 "Appointive employee" defined. "Appointive employee" means a person who is appointed to a position described in subsection 4 of section 1.090.

Sec. 1.013 "City" defined. "City" means the City of Reno in Washoe County, Nevada.

Sec. 1.014 "City Council" or "Council" defined. "City Council" or "Council" means the governing body of the City.

Sec. 1.015 "Civil Service" or "Civil Service System" defined. "Civil Service" or "Civil Service System" means the system created by section 9.020.

Sec. 1.016 "Commission" defined. "Commission" means the Civil Service Commission created by section 9.030.

Sec. 1.017 "County" defined. "County" means Washoe County, Nevada.

Sec. 1.018 "State" defined. "State" means the State of Nevada.

Sec. 1.019 Construction of Charter.

1. Except where the context by clear implication otherwise requires, this Charter must be construed as follows:

(a) The titles or leadlines which are applied to the articles and sections of this Charter are inserted only as a matter of convenience and ease in reference and are not intended to limit the scope or intent of any provision of this Charter.



(b) Words in the singular number include the plural, and words in the plural include the singular number.

(c) Words in the masculine gender include the feminine, and words in the neuter gender refer to any gender.

3. This Charter being necessary to secure and preserve the public health, safety, prosperity, security, comfort, convenience, general welfare and property of the residents of the City, it is expressly declared that it is the intent of the Legislature that each of the provisions of this Charter be liberally construed to effect the purposes and objects for which this Charter is intended, and the specific mention of particular powers must not be construed as limiting in any way the general powers which are necessary to carry out the purposes and objects of this Charter.

Sec. 1.5. The Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, at page 1962, is hereby amended by adding thereto new sections to be designated as sections 1.140, 1.150 and 1.160, respectively, immediately following section 1.130, to read as follows:

Sec. 1.140 Charter Committee; Appointment; terms; qualifications; vacancies; compensation.

1. The Charter Committee must be appointed as follows:

(a) Each Council Member shall appoint one member;

(b) The Mayor shall appoint one member;

(c) The members of the Senate delegation representing the residents of the City and belonging to the majority party of the Senate shall appoint two members;

(d) The members of the Senate delegation representing the residents of the City and belonging to the minority party of the Senate shall appoint one member;

(e) The members of the Assembly delegation representing the residents of the City and belonging to the majority party of the Assembly shall appoint two members; and

(f) The members of the Assembly delegation representing the residents of the City and belonging to the minority party of the Assembly shall appoint one member.

2. Each member of the Charter Committee:

(a) If appointed by a Council Member or the Mayor, serves during the term of the person by whom he or she was appointed;



- (b) If appointed by members of the Senate delegation, serves a term of 4 years;*
- (c) If appointed by members of the Assembly delegation, serves a term of 2 years;*
- (d) Must be a registered voter in the City; and*
- (e) Must reside in the City during his or her term of office.*

3. If a vacancy occurs on the Charter Committee, the vacancy must be filled in the same manner as the original appointment for the remainder of the unexpired term.

4. Members of the Charter Committee are entitled to receive compensation, in an amount set by ordinance of the City Council, for each full meeting of the Charter Committee they attend.

Sec. 1.150 Charter Committee: Officers; meetings; duties. The Charter Committee shall:

1. Elect a Chair and Vice Chair from among its members, who each serve for a term of 2 years;

2. Meet at least once every 2 years before the beginning of each regular session of the Legislature and when requested by the City Council or the Chair of the Charter Committee;

3. Meet jointly with the City Council on a date to be set after the final biennial meeting of the Charter Committee is conducted pursuant to subsection 2 and before the beginning of the next regular session of the Legislature to advise the City Council with regard to the recommendations of the Charter Committee concerning necessary amendments to this Charter;

4. If the City Council elects to submit the Charter Committee's recommended amendments to the Legislature as one of the City's bill draft requests, assist the City Council in the timely preparation of such amendments for presentation to the Legislature on behalf of the City;

5. If the City Council elects not to submit the Charter Committee's recommended amendments to the Legislature as one of the City's bill draft requests, seek sponsorship of a legislative measure by a member of the Senate or Assembly delegation representing the residents of the City and assist such member in the timely preparation of such amendments for presentation to the Legislature; and

6. Perform all functions and do all things necessary to accomplish the purposes for which it is established,



including, but not limited to, holding meetings and public hearings, and obtaining assistance from City officers.

Sec. 1.160 Charter Committee: Removal of member; grounds. Any member of the Charter Committee may be removed by a majority of the remaining members of the Charter Committee for cause, including failure or refusal to perform the duties of the office, absence from three successive regular meetings or ceasing to meet any qualification for appointment to the Charter Committee.

Sec. 2. Section 1.010 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, at page 1962, is hereby amended to read as follows:

Section 1.010 ~~{Preamble: Legislative intent.}~~ *Purpose; other laws.*

1. In order to provide for the orderly government of the City of Reno and the general welfare of its citizens the Legislature hereby establishes this Charter for the government of the City of Reno. ~~{It is expressly declared as the intent of the Legislature that all provisions of this Charter be liberally construed to carry out the express purposes of the Charter and that the specific mention of particular powers shall not be construed as limiting in any way the general powers necessary to carry out the purposes of the Charter.}~~

2. Any powers expressly granted by this Charter are in addition to any powers granted to a city by the general law of this state. All provisions of Nevada Revised Statutes which are applicable generally to cities (not including, unless otherwise expressly mentioned in this Charter, chapter 265, 266 or 267 of NRS) which are not in conflict with the provisions of this Charter apply to the City of Reno.

Sec. 3. Section 1.020 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, at page 1962, is hereby amended to read as follows:

Sec. 1.020 Incorporation of City.

~~{1.}~~ All persons who are inhabitants of that portion of the State ~~{of Nevada}~~ embraced within the limits set forth in section 1.030 shall constitute a political and corporate body by the name of "City of Reno" and by that name they and their successors shall be known in law, have perpetual succession and may sue and be sued in all courts.

~~{2. Whenever used throughout this charter, "City" means the City of Reno.}~~



Sec. 4. Section 1.030 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as amended by chapter 482, Statutes of Nevada 1973, at page 714, is hereby amended to read as follows:

Sec. 1.030 Description of territory.

1. The territory embraced in the City is that certain land described in the official plat required by NRS 234.250 to be filed with the County Recorder and County Assessor, ~~of Washoe County,~~ as such plat is amended from time to time.

2. The territory described in paragraph (a) of subsection 2 of section 1 of article I of chapter 180, Statutes of Nevada 1949, lying within the City ~~of Reno,~~ is hereby detached from the City ~~of Reno,~~ and is included within the boundaries of the City of Sparks.

Sec. 5. Section 1.070 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 515, Statutes of Nevada 1997, at page 2452, is hereby amended to read as follows:

Sec. 1.070 Elective offices: Vacancies. Except as otherwise provided in NRS 268.325:

1. Except as otherwise provided in this section, a vacancy in the City Council or in the office of City Attorney or Municipal Judge must be filled by a majority vote of the members of the City Council within 30 days after the occurrence of the vacancy. A person may be selected to fill a prospective vacancy in the City Council before the vacancy occurs. In ~~such a case,~~ *filling a prospective vacancy*, each member of the Council, except any member whose term of office expires before the occurrence of the vacancy, may participate in any action taken by the Council pursuant to this section. The appointee must have the same qualifications as are required of the elective official.

2. The appointee shall serve until the next general municipal election and until his or her successor is elected and qualified. Notwithstanding the provisions of section 5.010 of this Charter to the contrary, the office must be filled by election at the next general municipal election. If that election is other than the election specified in section 5.010 of this Charter for the filing of the office, the election is only for the balance of the unexpired term for that office.

3. If a vacancy occurs in an office of City Council, in lieu of appointment, the City Council may, by resolution, declare a special election to fill the vacancy. The special



election must be conducted in accordance with the provisions of the resolution declaring the special election and section 5.030 of this Charter.

Sec. 6. Section 1.080 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 327, Statutes of Nevada 1999, at page 1366, is hereby amended to read as follows:

Sec. 1.080 Mayor and Council Members not to hold other office or employment.

1. The Mayor and Council Members shall not:

(a) Hold any other elective *or appointive* office, ~~for employment with Washoe County or the City,~~ except as provided by law or as a member of a board or commission *which is ancillary to the office of Mayor or Council Member* and for which no compensation is received.

(b) *Hold any other employment with the County, the City or any other political subdivision of the State which is governed or advised by a board or commission to which the Mayor or Council Member may be appointed in the course of his or her duties as Mayor or Council Member.*

(c) Be appointed to any office or position created by or the compensation for which was increased or fixed by the City Council until 1 year after the expiration of the term for which ~~such person~~ *the Mayor or Council Member* was elected.

2. Any person who violates the provisions of subsection 1 shall automatically forfeit his or her office.

Sec. 7. (Deleted by amendment.)

Sec. 7.5. Section 1.090 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 210, Statutes of Nevada 1997, at page 734, is hereby amended to read as follows:

Sec. 1.090 Appointive officers ~~and~~ *and appointive employees.*

1. The City Council shall provide for the appointment of a City Manager to perform the duties outlined in section 3.020. A vacancy in the office of City Manager must be filled within 6 months.

2. Applicants for the position of City Manager need not be residents of the City or State at the time of their appointment, except that applicants who are residents of the City and who have qualifications equal to those of nonresidents must be given preference in filling the position.



3. The City Council may establish such other appointive offices as it may deem necessary for the operation of the City by designating the position and the qualifications therefor by ordinance. Appointive offices are limited to the head of each department or division except:

(a) One immediate assistant for the Director of Public Works.

(b) ~~[Special technical staff members who report directly to the City Manager.]~~

~~—(c)~~ In the Fire Department and Police Department, no positions below the office of Chief.

~~4. Special technical staff members who report directly to the City Manager serve as appointive employees.~~

5. Appointment of ~~[such]~~ officers ~~and employees~~ pursuant to subsections 3 and 4 must be made by the City Manager, and the appointment of the Chief of Police and the Fire Chief must be confirmed by the City Council.

~~6.~~ A City Clerk must be appointed by the City Council.

Sec. 8. Section 1.100 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 210, Statutes of Nevada 1997, at page 734, is hereby amended to read as follows:

Sec. 1.100 Appointive officers ~~and appointive employees~~: Miscellaneous provisions.

1. All appointive officers ~~and appointive employees~~, except the City Clerk and his or her deputy, shall perform such duties as ~~may be~~ are designated by the City Manager.

2. Any employee of the City holding a Civil Service rating under the City ~~and~~ who is appointed to any position provided for in section 1.090 does not lose his or her Civil Service rating while serving in that position.

3. ~~[All appointive officers are entitled to all employment benefits to which Civil Service employees are entitled.]~~

~~4.~~ The City Council may require from all other officers and employees of the City constituted or appointed under this Charter, except the Mayor and Council Members, sufficient security for the faithful and honest performance of their respective duties.



Sec. 9. Section 1.110 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, at page 1964, is hereby amended to read as follows:

Sec. 1.110 Appointive officers ~~{-}~~ and appointive employees: Duties; salary ~~{-}~~; benefits.

1. All appointive officers and appointive employees of the City, including those appointed by the City Council, except ~~{the}~~:

(a) The City Manager;

(b) The City Clerk and the chief deputy and the Manager of Record Systems appointed by the City Clerk pursuant to section 3.046;

(c) Assistants appointed by the City Attorney pursuant to section 3.066; and ~~{the}~~

(d) The members of the City Board of Health and the City Health Officer, if the City administers the operations of the Board of Health,

shall perform ~~{such}~~ their duties under the direction of the City Manager ~~{-as may be}~~ or as designated by the City Council ~~{-}~~ through the City Manager.

2. All appointive officers and appointive employees of the City ~~{shall receive such salary as may be}~~ are entitled to the salary designated by the City Council ~~{-}~~ through the adoption of a resolution establishing the salary ranges applicable to each office and position.

3. All appointive officers and appointive employees are entitled to the employment benefits established by the applicable law of the State and to such other benefits as the City Council provides by resolution.

Sec. 10. (Deleted by amendment.)

Sec. 11. Section 2.030 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, at page 1965, is hereby amended to read as follows:

Sec. 2.030 City Council: Discipline of members, other persons; subpoena power.

1. The City Council may:

(a) Provide for the punishment of the City Clerk or any member for disorderly conduct committed in its presence.

(b) Order the attendance of witnesses and the production of all papers relating to any business before the City Council.

2. If any person ordered to appear before the City Council fails to obey such an order:



(a) The City Council or any member thereof may apply to the clerk of the district court for a subpoena commanding the attendance of the person before the City Council.

(b) ~~{Such Clerk}~~ *The clerk of the district court* may issue the subpoena, and any peace officer may serve it.

(c) If the person upon whom the subpoena is served fails to obey it, the court may issue an order to show cause why ~~{even}~~ *the* person should not be held in contempt of court and upon ~~the~~ hearing of the matter may adjudge ~~{such}~~ *the* person guilty of contempt and punish him or her accordingly.

Sec. 12. Section 2.040 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 255, Statutes of Nevada 2001, at page 1131, is hereby amended to read as follows:

Sec. 2.040 Meetings: Quorum.

1. The City Council shall hold not less than two regular meetings each month. The times and dates of ~~{the}~~ *regular* meetings must be established by ~~{ordinance}~~ *resolution*.

2. ~~*Special meetings of the City Council may be held at the call of the Mayor.*~~

3. Except as otherwise provided in NRS 241.0355, a majority of all the members of the City Council constitutes a quorum to do business, but a lesser number may meet and recess from time to time, and compel the attendance of the absent members.

~~{3.—Except as otherwise provided by law, all sessions and all proceedings of the City Council must be public.}~~

4. ~~*The meetings of the City Council must be conducted in accordance with chapter 241 of NRS.*~~

Sec. 13. (Deleted by amendment.)

Sec. 14. Section 2.070 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as amended by chapter 553, Statutes of Nevada 1973, at page 878, is hereby amended to read as follows:

Sec. 2.070 Oaths and affirmations. The Mayor, ~~{Assistant}~~ *the Vice Mayor* while acting in the place of the Mayor, each Council Member and the City Clerk may administer oaths and affirmations relating to any business pertaining to the City, before the City Council or to be considered by the City Council.

Sec. 15. Section 2.080 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as amended by chapter



599, Statutes of Nevada 1993, at page 2499, is hereby amended to read as follows:

Sec. 2.080 Powers of City Council: Ordinances, resolutions and orders ~~§ 1~~; *wavier of salary and benefits.*

1. The City Council may make and pass all ordinances, resolutions and orders not repugnant to the Constitution of the United States or the *Constitution of the* State of Nevada, or to the provisions of Nevada Revised Statutes or of this Charter, necessary for the municipal government and the management of the affairs of the City, and for the execution of all the powers vested in the City.

2. When power is conferred upon the City Council to do and perform anything ~~§ 1~~ and the manner of exercising such power is not specifically provided for, the City Council may provide by ordinance the manner and details necessary for the full exercise of such power.

3. The City Council may enforce ordinances by providing penalties not to exceed those established by the Legislature for misdemeanors.

4. The City Council shall have such powers, not in conflict with the express or implied provisions of this Charter, as are conferred generally by statute upon the governing bodies of cities organized under a special charter.

5. Except as otherwise provided in this subsection ~~§ 1~~ and subsection 6, the City Council shall not pass any ordinance or resolution increasing or diminishing the salary of any elective officer during the term for which he or she is elected or appointed. The City Council may pass an ordinance increasing the salary of a Municipal Judge during the term for which he or she is elected or appointed.

6. *Except as otherwise prohibited or limited by statute or regulation or as otherwise provided in this subsection, the Mayor and any Council Member may waive the payment of any part of the salary and benefits otherwise payable to him or her during any budget year. Any such waiver must be in writing, does not extend beyond the current term of the Mayor or Council Member and may not be rescinded.*

Sec. 16. Section 2.090 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as amended by chapter 553, Statutes of Nevada 1973, at page 878, is hereby amended to read as follows:

Sec. 2.090 Ordinances: Passage by bill; amendments; subject matter; title requirements.



1. No ordinance may be passed except by bill and by a majority vote of the City Council. The style of all ordinances ~~{shall}~~ *must* be as follows: "The City Council of the City of Reno ~~{do}~~ *does* ordain:".

2. No ordinance ~~{shall}~~ *may* contain more than one *general* subject ~~{, which shall}~~ *matter and matters which pertain to or are necessarily connected with the general subject matter, and the general subject must* be briefly indicated in the title. Where the *general* subject of the ordinance is not so expressed in the title, the ordinance is void ~~. {as to the matter not expressed in the title.}~~

3. Any ordinance which amends an existing ordinance ~~{shall}~~ *must* set out in full the ordinance or sections thereof to be amended, and ~~{shall}~~ *must* indicate matter to be omitted by enclosing it in brackets and ~~{shall indicate}~~ *any* new matter by underscoring or by italics.

Sec. 17. Section 2.100 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 327, Statutes of Nevada 1999, at page 1366, is hereby amended to read as follows:

Sec. 2.100 Ordinances: Enactment procedure; emergency ordinances.

1. All proposed ordinances when first proposed must be ~~{referred to a committee for consideration,}~~ *read to the City Council by title*, after which an adequate number of copies of the proposed ordinance must be filed with the City Clerk for public distribution. Except as otherwise provided in subsection 3, notice of the filing must be published once in a newspaper qualified pursuant to the provisions of chapter 238 of NRS, and published in the City at least 10 days before the adoption of the ordinance. The City Council shall adopt or reject the ordinance, or an amendment thereto, within 45 days after the date of publication.

2. At the next regular meeting or adjourned *regular* meeting of the City Council held at least 10 days after the date of publication, the ~~{committee shall report the ordinance back to the City Council. Thereafter, if proposed ordinance}~~ *must be returned to the City Council for consideration and possible adoption. At that meeting, the title of the proposed ordinance* must be read as first proposed or as amended, and thereupon the proposed ordinance must be finally voted upon or action thereon postponed.



3. In cases of emergency or where the ordinance is of a kind specified in section 7.030, by unanimous consent of the City Council, final action may be taken immediately or at an emergency meeting called for that purpose, and no notice of the filing of the copies of the proposed ordinance with the City Clerk need be published.

4. All ordinances must be signed by the Mayor, attested by the City Clerk and published by title, together with the names of the *members of the City Council* ~~[Members]~~ voting for or against passage, in a newspaper qualified pursuant to the provisions of chapter 238 of NRS, and published in the City for at least one publication, before the ordinance becomes effective. The City Council may, by majority vote, order the publication of the ordinance in full in lieu of publication by title only.

5. The City Clerk shall record all ordinances in a book kept for that purpose, together with the affidavits of publication by the publisher.

Sec. 18. Section 2.120 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 561, Statutes of Nevada 1977, at page 1393, is hereby amended to read as follows:

Sec. 2.120 Codification of ordinances; publication of Code.

1. The City Council may codify and publish a Code of its municipal ordinances in the form of a Municipal Code, which Code may, at the election of the City Council, have incorporated therein a copy of this Charter and such additional data as the City Council ~~{may prescribe. When such Code is published, two copies shall be filed with}~~ *prescribes. Whenever the Code is published or revised, a copy must be provided to the Librarian at the County Public Library in Reno, the County Law Library and the Supreme Court Law Library. The requirements of this subsection are satisfied by the provision of a paper copy, an electronic copy or a copy of the Code in such other format as is requested by a library.*

2. The ordinances in the Code ~~{shall}~~ *must* be arranged in appropriate chapters, articles and sections, excluding the titles, enacting clauses, signature of the Mayor, attestations and other formal parts.

3. The codification ~~{shall}~~ *must* be adopted by an ordinance and ~~{shall}~~ *must* not contain any substantive



changes, modifications or alterations of existing ordinances, and the only title necessary for the ordinance ~~shall be, is,~~ "An ordinance for codifying and compiling the general ordinances of the City of Reno."

4. The codification may be amended or extended by ordinance.

Sec. 19. Section 2.140 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 216, Statutes of Nevada 2007, at page 726, is hereby amended to read as follows:

Sec. 2.140 General powers of City Council.

1. Except as otherwise provided in subsection 2 and section 2.150, the City Council may:

(a) Acquire, control, improve and dispose of any real or personal property for the use of the City, its residents and visitors.

(b) Except as otherwise provided in NRS 598D.150 and 640C.100, regulate and impose a license tax for revenue upon all businesses, trades and professions.

(c) Provide or grant franchises for public transportation and utilities.

(d) Appropriate money for advertising and publicity and for the support of a municipal band.

(e) Enact and enforce any police, fire, traffic, health, sanitary or other measure which does not conflict with the general laws of the State . ~~of Nevada.~~ An offense that is made a misdemeanor by the laws of the State ~~of Nevada~~ shall ~~false~~ be deemed ~~also~~ to be a misdemeanor against the City whenever the offense is committed within the City.

(f) Fix the rate to be paid for any utility service provided by the City as a public enterprise. Any charges due for services, facilities or commodities furnished by any utility owned by the City is a lien upon the property to which the service is rendered and is perfected by filing with the County Recorder a statement by the City Clerk of the amount due and unpaid and describing the property subject to the lien. Any such lien is:

(1) Coequal with the latest lien upon the property to secure the payment of general taxes.

(2) Not subject to extinguishment by the sale of any property on account of the nonpayment of general taxes.



(3) Prior and superior to all liens, claims, encumbrances and titles other than the liens of assessments and general taxes.

2. The City Council:

(a) Shall not sell telecommunication service to the general public.

(b) May purchase or construct facilities for providing telecommunication that intersect with public rights-of-way if the governing body:

(1) Conducts a study to evaluate the costs and benefits associated with purchasing or constructing the facilities; and

(2) Determines from the results of the study that the purchase or construction is in the interest of the general public.

3. Any information relating to the study conducted pursuant to subsection 2 must be maintained by the City Clerk and made available for public inspection during the business hours of the Office of the City Clerk.

4. Notwithstanding the provisions of paragraph (a) of subsection 2, an airport may sell telecommunication service to the general public.

5. As used in this section:

(a) "Telecommunication" has the meaning ascribed to it in NRS 704.025.

(b) "Telecommunication service" has the meaning ascribed to it in NRS 704.028.

Sec. 20. Section 3.010 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 210, Statutes of Nevada 1997, at page 735, is hereby amended to read as follows:

Sec. 3.010 Mayor: Duties; ~~Assistant~~ Vice Mayor.

1. The Mayor:

(a) Shall serve as a member of the City Council and preside over its meetings.

(b) Shall not have any administrative duties.

(c) Must be recognized as the head of the City Government for all ceremonial purposes.

(d) Shall determine the order of business at meetings pursuant to the rules of the City Council.

(e) Is entitled to vote and shall vote last on all roll call votes.

(f) Shall take all proper measures for the preservation of the public peace and order and for the suppression of riots



and all forms of public disturbance, for which he or she is authorized to appoint extra police officers temporarily and without regard to Civil Service rules and regulations, and to call upon the ~~County Sheriff [of Washoe County]~~ or, if that force is inadequate, to call upon the Governor for assistance.

(g) Shall perform such other duties, except administrative duties, as ~~[may be]~~ are prescribed by ordinance or by the provisions of Nevada Revised Statutes which apply to a mayor of a city organized pursuant to the provisions of a special charter.

2. At the first regular City Council meeting in November of each year ~~1-1~~ *or whenever a vacancy occurs in the office of Vice Mayor*, the City Council shall elect one of the Council Members to be ~~Assistant~~ Vice Mayor. That person:

(a) Holds that office and title, without additional compensation, for a term of 1 year or until removed after a hearing for cause by a vote of six-sevenths of the City Council ~~1-1~~ *or the office otherwise becomes vacant*.

(b) Shall perform the duties of Mayor during the absence or disability of the Mayor.

(c) Shall act as Mayor if the office of Mayor becomes vacant until the vacancy is filled pursuant to section 1.070 of this Charter.

Sec. 21. Section 3.020 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 210, Statutes of Nevada 1997, at page 735, is hereby amended to read as follows:

Sec. 3.020 City Manager: Duties; compensation.

1. The City Manager is the Chief Executive and Administrative Officer of the City Government. He or she is responsible to the City Council for the proper administration of all affairs of the City. The duties and salary of the City Manager must be fixed by the City Council and he or she is entitled to be reimbursed for all expenses incurred in the performance of his or her duties.

2. The City Manager may appoint such clerical and administrative assistants as he or she ~~[may deem]~~ *deems* necessary.

3. ~~[He or she]~~ *The City Manager* may designate an acting City Manager to serve in his or her absence or, if he or she fails to do so, the City Council may appoint an acting City Manager.



4. No ~~member of the City Council~~ ~~{Member}~~ may be appointed as City Manager during the term for which he or she was elected, or for 1 year thereafter.

5. The City Manager shall appoint all officers and employees of the City and may remove any officer or employee of the City except as otherwise provided in this Charter. The City Manager may authorize the head of a department or office to appoint or remove his or her subordinates. The appointment of a Chief of Police or a Fire Chief by the City Manager does not take effect until it has been confirmed by a majority vote of the members of the City Council. If a person so nominated is not confirmed, the City Manager shall continue to submit nominations until a nominee is confirmed.

Sec. 22. (Deleted by amendment.)

Sec. 23. Section 3.040 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 210, Statutes of Nevada 1997, at page 737, is hereby amended to read as follows:

Sec. 3.040 City Clerk: Duties.

1. The City Clerk shall:

(a) Keep the corporate seal and all books and papers belonging to the City.

(b) Attend all meetings of the City Council and keep an accurate journal of its proceedings, including a record of all ordinances, bylaws and resolutions passed or adopted by it. After approval at each meeting of the City Council, the City Clerk shall attest the journal after it has been signed by the Mayor.

(c) Sign all warrants ~~for payment~~ issued.

(d) Number and sign all ~~business~~ licenses issued by the City. All ~~business~~ licenses must be in a form devised by the City Clerk and approved by the City Council.

(e) Enter upon the journal the result of the vote of the City Council upon the passage of ordinances, or of any resolution appropriating money, abolishing licenses, or increasing or decreasing the rates of licenses.

(f) Be the official collector of all business license fees and penalties of the City, and all money making up the City revenues, except general taxes and special assessments, must be paid over to him or her.

2. The City Clerk has custody of all the official records of the City. He or she is responsible to the City Council for



the proper discharge of his or her duties. The duties and salary of the City Clerk are fixed by the City Council, and he or she is entitled to be reimbursed for all expenses incurred in the performance of his or her duties.

3. The City Clerk may, with approval of the City Council, appoint one chief deputy and one Manager of Record Systems, who are not subject to the provisions of article IX of this Charter. The City Clerk may designate a member of his or her staff as acting City Clerk to:

- (a) Administer oaths; and
- (b) Perform all the duties of the City Clerk in his or her absence.

Sec. 24. Section 3.060 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 327, Statutes of Nevada 1999, at page 1369, is hereby amended to read as follows:

Sec. 3.060 City Attorney: Qualifications; duties; salary.

1. The City Attorney must be a duly licensed member of the State Bar of Nevada and a qualified elector within the City. Once elected, he or she shall hold office for a term of 4 years and until his or her successor is duly elected and qualified.

2. The City Attorney is the Legal Officer of the City and shall:

(a) Perform such duties as ~~{may-be}~~ are designated by ordinance;

(b) Be present at all meetings of the City Council;

(c) Be counsel for the ~~{Civil Service}~~ Commission;

(d) Devote his or her full time to the duties of the office; and

(e) Not engage in the private practice of law.

3. The City Attorney is entitled to receive a salary as fixed by resolution of the City Council.

4. The City Attorney may appoint and remove such assistants as he or she ~~{may-require}~~ *requires* in the discharge of the duties of his or her office. Such assistants must not be Civil Service employees. The Council may appropriate such an amount of money as it ~~{may-deem}~~ *deems* proper to compensate such assistants. Such assistants who are attorneys and are employed for more than 20 hours per week by the City Attorney shall not engage in the private practice of law.



Sec. 25. Section 3.080 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, at page 1975, is hereby amended to read as follows:

Sec. 3.080 County Assessor to be ex officio City Assessor; duties.

1. The County Assessor of ~~Washoe~~ the County shall be ex officio City Assessor of the City. The County Assessor shall perform such duties for the City without additional compensation.

2. Upon request of the ex officio City Assessor, the City Council may appoint and set the salary of a Deputy City Assessor to perform such duties relative to city assessments as may be deemed necessary.

Sec. 26. Section 3.090 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as amended by chapter 414, Statutes of Nevada 1975, at page 607, is hereby amended to read as follows:

Sec. 3.090 County Treasurer to be ex officio City Treasurer; duties.

1. The Treasurer of ~~Washoe~~ the County shall be ex officio City Treasurer and Tax Receiver of the City. The County Treasurer shall perform such duties for the City without additional compensation.

2. The City Treasurer shall, with the consent of the City Council, appoint the City Clerk or other city officer as Deputy City Treasurer to perform such duties as may be designated by the City Council.

3. The City shall compensate ~~Washoe~~ the County annually in an amount agreed upon by the City Council and the Board of County Commissioners of ~~Washoe~~ the County for the services rendered by the Treasurer of ~~Washoe~~ the County under this section.

Sec. 27. Section 3.140 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as amended by chapter 210, Statutes of Nevada 1997, at page 737, is hereby amended to read as follows:

Sec. 3.140 Interference ~~and direction~~ by City Council.

1. The Mayor or Council Members shall not dictate the appointment, suspension or removal of any City administrative officer or employee appointed by the City Manager or his or her subordinates. No person covered by the rules and regulations of the ~~Civil Service~~ Commission may



be appointed, suspended or removed except as provided in those rules and regulations.

2. *Any action directed by the City Council in a public meeting shall be deemed to be direction to the City Manager and not to any subordinate of the City Manager.* The City Council or its members shall not ~~deal~~ :

(a) *Deal* directly with a City official or employee on a matter pertaining to City business , *except for the purpose of inquiry*, but shall deal through the City Manager ~~+~~ ; or

(b) *Give any order, publicly or privately, to any subordinate of the City Manager.*

Sec. 28. Section 4.010 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 9, Statutes of Nevada 1993, at page 21, is hereby amended to read as follows:

Sec. 4.010 Municipal Court.

1. The Municipal Court must include one department and may include additional departments in the discretion of the City Council. If the City Council determines to create additional departments, it shall do so by resolution and may appoint additional Municipal Judges to serve until the next election.

2. *The City Council may not reduce the term of office of any appointed or elected Municipal Judge.*

Sec. 29. Section 4.020 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 327, Statutes of Nevada 1999, at page 1369, is hereby amended to read as follows:

Sec. 4.020 Municipal Court: Qualifications of Municipal Judge; salary.

1. A Municipal Judge must be:

(a) An attorney licensed to practice law in the State . ~~of Nevada.~~

(b) A qualified elector within the City.

2. A Municipal Judge shall not engage in the private practice of law.

3. The salary of a Municipal Judge must be:

(a) Fixed by resolution of the City Council.

(b) Uniform for all judges in the Municipal Court.



Sec. 30. Section 4.040 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 208, Statutes of Nevada 1985, at page 676, is hereby amended to read as follows:

Sec. 4.040 Procedure, additional judges. The practice and proceedings in the Court must conform as nearly as practicable to that of justices' courts in similar cases. Upon the written request of the City Manager an additional temporary Municipal Judge may be provided for so long as the City Council authorizes additional compensation for such a Judge. ~~[Whenever a person is sentenced to pay a fine, the Court may adjudge and enter upon the docket a supplemental order that the offender may, if he or she desires, work on the streets or public works of the City at the rate of \$25 for each day. The money so earned must be applied against the fine until it is satisfied.]~~

Sec. 31. Section 5.010 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 87, Statutes of Nevada 2001, at page 557, is hereby amended to read as follows:

Sec. 5.010 General elections.

~~1. [On the Tuesday after the first Monday in November 1998, and at each successive interval of 4 years, there must be elected by the qualified voters of the City, at the general election, a Mayor, Council Members from the second and fourth wards, a Municipal Judge and a City Attorney, all of whom hold office for a term of 4 years and until their successors have been elected and qualified pursuant to subsection 3 or 4.~~

~~2. On the Tuesday after the first Monday in November 2000, and at each successive interval of 4 years, there must be elected by the qualified voters of the City, at the general election, Council Members from the first, third and fifth wards, one Council Member at large and two Municipal Judges, all of whom hold office for a term of 4 years and until their successors have been elected and qualified pursuant to subsection 5 or 6.~~

~~3.] On the [Tuesday after the first Monday] date fixed by the election laws of the State for the statewide general election in November 2002, and at each successive interval of 6 years, there must be elected by the qualified voters of the City, at the general election, a Municipal Judge, who holds~~



office for a term of 6 years and until his or her successor has been elected and qualified.

~~{4-}~~ 3. On the ~~{Tuesday after the first Monday}~~ date fixed by the election laws of the State for the statewide general election in November 2002, and at each successive interval of 4 years, there must be elected by the qualified voters of the City, at the general election, a Mayor, Council Members from the second and fourth wards, and a City Attorney, all of whom hold office for a term of 4 years and until their successors have been elected and qualified.

~~{5-}~~ 3. On the ~~{Tuesday after the first Monday}~~ date fixed by the election laws of the State for the statewide general election in November 2004, and at each successive interval of 6 years, there must be elected by the qualified voters of the City, at the general election, ~~{three}~~ one or more Municipal Judges, other than the Municipal Judge referred to in subsection 1, all of whom hold office for a term of 6 years and until their successors have been elected and qualified.

~~{6-}~~ 4. On the ~~{Tuesday after the first Monday}~~ date fixed by the election laws of the State for the statewide general election in November 2004, and at each successive interval of 4 years, there must be elected by the qualified voters of the City, at the general election, Council Members from the first, third and fifth wards and one Council Member at large, all of whom hold office for a term of 4 years and until their successors have been elected and qualified.

Sec. 32. Section 5.020 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 376, Statutes of Nevada 2005, at page 1438, is hereby amended to read as follows:

Sec. 5.020 Primary elections; declaration of candidacy.

1. A candidate for any office to be voted for at an election must file a declaration of candidacy with the City Clerk. All filing fees collected by the City Clerk must be deposited to the credit of the General Fund of the City.

2. If for any general election, there are three or more candidates for any office to be filled at that election, a primary election for any such office must be held on the date fixed by the election laws of ~~{this}~~ the State for statewide elections, at which time there must be nominated candidates for the office to be voted for at the next general election. If for any general election there are two or fewer candidates for



any office to be filled at that election, their names must not be placed on the ballot for the primary election but must be placed on the ballot for the general election. *The general election must be held on the date fixed by the election laws of the State for the statewide general election.*

3. In the primary election:

(a) The names of the two candidates for Municipal Judge, City Attorney or a particular City Council seat, as the case may be, who receive the highest number of votes must be placed on the ballot for the general election.

(b) Candidates for Council Member who represent a specific ward must be voted upon only by the registered voters of that ward.

(c) Candidates for Mayor and Council Member at large must be voted upon by all registered voters of the City.

4. The Mayor and all Council Members must be voted upon by all registered voters of the City at the general election.

Sec. 33. Section 5.070 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 470, Statutes of Nevada 2005, at page 2304, is hereby amended to read as follows:

Sec. 5.070 Availability of lists of registered voters. If, for any purpose relating to an election or to candidates or issues involved in that election, any organization, group or person requests a list of registered voters of the City, the department, office or agency which has custody of the official register of voters shall, except as otherwise provided in NRS 293.5002 and 293.558, permit the organization, group or person to copy the voters' names and addresses from the official register of voters or furnish such a list upon payment of the cost established by ~~the~~ *the election laws of the State.*

Sec. 34. Section 5.100 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by chapter 9, Statutes of Nevada 1993, at page 24, is hereby amended to read as follows:

Sec. 5.100 Election returns; canvass; certificates of election; entry of officers upon duties; tie vote procedure.

1. The election returns from any special, primary or general election must be filed with the City Clerk, who shall immediately place those returns in a safe or vault, and no



person may handle, inspect or in any manner interfere with those returns until canvassed by the City Council.

2. The City Council and City Manager shall meet within 10 days after any election and canvass the returns and declare the result. The election returns must then be sealed and kept by the City Clerk for 6 months, and no person may have access thereto except on order of a court of competent jurisdiction or by order of the City Council.

3. The City Clerk, under his or her hand and official seal, shall issue to each person declared to be elected a certificate of election. The officers elected shall qualify and enter upon the discharge of their respective duties at the first regular City Council meeting following their election.

4. If any election results in a tie, the City Council shall summon the candidates who received the tie vote and determine the tie ~~{by lot}~~ *as provided in this subsection. The City Clerk shall provide and open in the presence of the candidates who received the tie vote an unused 52-card deck of playing cards, removing any jokers and blank cards. The City Clerk shall shuffle the cards thoroughly and present the shuffled deck to the City Manager, or to the person designated by the City Manager for this purpose. One of the candidates who received the tie vote shall then draw one card from the deck, and the City Clerk shall record the suit and number of the card. The card then must be returned to the deck, and the City Clerk shall shuffle the cards thoroughly and present the shuffled deck to the City Manager, or to the person designated by the City Manager for this purpose, and another of the candidates who received the tie vote shall draw one card from the deck. This process must be repeated until each of the candidates who received the tie vote has drawn one card from the deck and the result of each draw has been recorded. The candidate who draws the high card shall be deemed the winner of the election. For the purposes of this subsection, aces are high and twos are low. If the candidates draw cards of otherwise equal value, the card of the higher suit is the high card. Spades are highest, followed in descending order by hearts, clubs and diamonds.* The City Clerk shall issue to the winner a certificate of election.

Sec. 35. Section 6.010 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as last amended by



chapter 416, Statutes of Nevada 2001, at page 2106, is hereby amended to read as follows:

Sec. 6.010 Local improvement law. Except as otherwise provided in subsection 2 of section 2.140 and section 2.150, the City Council, on behalf of the City and in its name, without any election, may from time to time acquire, improve, equip, operate and maintain, convert to or authorize:

1. Curb and gutter projects;
2. Drainage projects;
3. Off-street parking projects;
4. Overpass projects;
5. Park projects;
6. Sanitary sewer projects;
7. Security walls;
8. Sidewalk projects;
9. Storm sewer projects;
10. Street projects;
11. Underground electric and communication facilities;
12. Underpass projects; ~~and~~
13. Water projects ~~;~~ ; and

14. Any other projects authorized by the laws of the State, including, without limitation, chapter 271 of NRS.

Sec. 36. Section 7.010 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, at page 1980, is hereby amended to read as follows:

Sec. 7.010 Debt limit.

1. The City shall not incur an indebtedness in excess of 15 percent of the total assessed valuation of the taxable property within the boundaries of the City ~~;~~ , *as shown on the tax list or assessment roll in effect as of the date of issuance of the municipal securities constituting the debt.*

2. In determining any debt limitation under this section, there shall not be counted as indebtedness:

(a) Warrants or other securities which are payable upon presentation or demand or within 1 year from the date thereof.

(b) Securities payable from special assessments against benefited property, whether issued pursuant to any general or special law and irrespective of whether such special assessment securities are payable from general ad valorem taxes.



(c) Securities issued pursuant to any general or special law the principal and interest of which are payable solely from revenues of the City derived from other than general ad valorem taxes.

Sec. 37. Section 7A.040 of the Charter of the City of Reno, being chapter 460, Statutes of Nevada 1979, at page 860, is hereby amended to read as follows:

Sec. 7A.040 "Engineer" defined. "Engineer" means the ~~Director of Public Works, the~~ City Engineer or a firm of engineers employed by the City in connection with any undertaking, any project or the exercise of any power authorized in this article.

Sec. 38. Section 8.010 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as amended by chapter 561, Statutes of Nevada 1977, at page 1397, is hereby amended to read as follows:

Sec. 8.010 Municipal taxes.

1. The City Council shall annually, at the time prescribed by law for levying taxes for State and County purposes, levy a tax not exceeding 2 percent upon the assessed value of all real and personal property within the City except as otherwise provided in the Local Government Securities Law and the Consolidated Local Improvements Law, as amended from time to time. The taxes so levied ~~{shall}~~ *must* be collected at the same time and in the same manner and by the same officers, exercising the same functions, as prescribed in the laws of the State ~~{of Nevada}~~ for collection of State and County taxes. The revenue laws of the State ~~{shall}~~ *are*, in every respect not inconsistent with the provisions of this Charter, ~~{be}~~ applicable to the levying, assessing and collecting of the municipal taxes.

2. In the matter of the equalization of assessments, the rights of the City and the inhabitants thereof ~~{shall}~~ *must* be protected in the same manner and to the same extent by the action of the County Board of Equalization as are the State and County.

3. All forms and blanks used in levying, assessing and collecting the revenues of the State and counties ~~{shall}~~ *must*, with such alterations or additions as ~~{may be}~~ *are* necessary, be used in levying, assessing and collecting the revenues of the City. The City Council shall enact all such ordinances as it ~~{may deem}~~ *deems* necessary and not inconsistent with this



Charter and the laws of the State for the prompt, convenient and economical collecting of the revenue.

Sec. 39. Section 9.010 of the Charter of the City of Reno, being chapter 662, Statutes of Nevada 1971, as amended by chapter 553, Statutes of Nevada 1973, at page 882, is hereby amended to read as follows:

Sec. 9.010 Civil Service: Objectives. The purpose of this article is to provide the City ~~{of Reno}~~ with an efficient workforce, with equity to all persons concerned. To attain this objective:

1. All appointments and promotions to positions in the Civil Service ~~{shall}~~ *must* be made on the sole basis of merit and fitness, without regard to non-job-related considerations.

2. Career and promotional opportunities ~~{shall}~~ *must* be readily available to employees.

3. A high level *of* performance ~~{shall be}~~ *is* required of employees to meet their obligations to the City administration, to the users of City services and to the taxpayers.

Sec. 40. Section 9.020 of the Charter of the City of Reno, being chapter 553, Statutes of Nevada 1973, as amended by chapter 561, Statutes of Nevada 1977, at page 1398, is hereby amended to read as follows:

Sec. 9.020 Civil Service and exempt positions.

1. A Civil Service System is created for the selection, appointment and promotion of all employees *of the City* except:

(a) A person *elected or* appointed to a position pursuant to this Charter.

(b) A person *who serves as a member of any board, commission, committee or other body created pursuant to the authority of the City.*

(c) A person employed by the City for less than 18 hours per week.

~~{(c)}~~ (d) A person for whose position half or more of the money is provided by a source other than the City.

~~{(d)}~~ (e) A person employed as a trainee for a period of time which is not more than that period prescribed for a probationary employee.

(f) *An employee of the Municipal Court who is hired directly by the Court.*

2. *The provisions of this article are not applicable to the selection, appointment, promotion, demotion, transfer,*



suspension, discipline or dismissal of any person described in subsection 1.

3. Any employee whose position was within the provisions of the Civil Service System before ~~May 15, 1977~~ *the effective date of this act* shall retain all rights and benefits to which he or she would otherwise be entitled under the *Civil Service System*.

Sec. 41. Section 9.040 of the Charter of the City of Reno, being chapter 553, Statutes of Nevada 1973, at page 885, is hereby amended to read as follows:

Sec. 9.040 Commission meetings. The Commission shall provide by rule for the holding of not less than one regular meeting per month, for special meetings as needed, for the election of one member as Chair, for the election of one member or appointment of a nonmember as Secretary, for public announcement of the time and place of meetings, and for meetings to be open to the public except as provided for by Commission rule. *A special meeting of the Commission may be called by the Chair of the Commission.*

Sec. 42. Section 9.050 of the Charter of the City of Reno, being chapter 553, Statutes of Nevada 1973, as amended by chapter 599, Statutes of Nevada 1993, at page 2501, is hereby amended to read as follows:

Sec. 9.050 Authority of Commission. Except as otherwise provided in ~~subsection 3 of section 9.050 of this article;~~ *this Charter*, the Commission has authority over and is responsible for:

1. All phases of the selection, appointment and promotion of employees in the Civil Service;
 2. The appeal rights of such employees in regard to dismissal, demotion, suspension and disciplinary actions; and
 3. The transfer of employees,
- together with all responsibilities assigned to the Commission by this article.

Sec. 43. Section 9.060 of the Charter of the City of Reno, being chapter 553, Statutes of Nevada 1973, at page 885, is hereby amended to read as follows:

Sec. 9.060 Rules.

1. ~~Except as otherwise provided in this section,~~ *the* Commission shall adopt or amend rules for the Civil Service System, consistent with the provisions of this article. ~~The Commission shall give or cause to be given at least 10 days' notice of time and place of a hearing public~~



meeting of the Commission on proposed rules ~~[shall be given]~~ by posting ~~[such]~~ the notice and a copy of each proposed rule on the bulletin board of each department and by giving ~~[three copies thereof]~~ a copy of the notice and each proposed rule to the City Council, the City Manager, each department head, and the president or secretary of each employee organization formally recognized by the City. At the meeting, the Commission shall permit a representative of the City Council or the City Manager, or both, to comment on any proposed rule. Any amendment of the rule governing the number of qualified persons certified to the appointing authority on the Civil Service eligibility list is not effective until the amendment is approved by the City Council.

2. The rules adopted by the Commission must provide for the following matters relating to the Civil Service System:

(a) The review and approval by the Commission of minimum qualifications set out in class specifications for positions.

(b) Open and promotional recruitment of employees.

(c) The development and scoring of examinations of candidates for positions.

(d) The development, maintenance and certification of Civil Service eligibility lists, which must include criteria for the use of selective certification as applicable to a position.

(e) Procedures for emergency, temporary, provisional and such other types of appointments as the Commission deems desirable to facilitate the business of the City.

(f) The establishment of probationary periods, procedures for the confirmation of employees into the Civil Service System after completion of any applicable probationary period, and procedures for the dismissal of probationary employees, including, without limitation, the identification of circumstances in which a probationary employee, including, without limitation, a promoted employee, may not be dismissed by the head of a department without right of appeal.

(g) Procedures for the promotion of employees and any right of promoted employees to return to their previous positions.

(h) Procedures for the transfer and layoff of employees.



(i) *Procedures for investigating and hearing appeals relating to the discipline or discharge of employees or alleged violations of the rules of the Commission.*

3. A copy of all rules adopted and all changes in them ~~shall~~ *must* be filed in the Office of the City Clerk. The Commission shall cause the rules and all changes in them to be ~~printed and~~ distributed as it ~~shall deem necessary.~~ *Copies shall be deemed necessary, except that the Commission shall cause a copy to be made available to all officers and employees of the City* ~~—2— on the City's website or in such other format as the Commission determines is appropriate.~~

4. The head of each department may adopt ~~rules~~ *procedures* for the governance of his or her department not inconsistent with this article or *the rules of the Commission* adopted thereunder.

5. *As used in this section, "selective certification" means the certification of a person for inclusion on a Civil Service eligibility list for a position based upon specialized knowledge, skills or abilities of the person, in addition to those required to meet the minimum qualifications for the position, that are required to perform the duties of the position successfully.*

Sec. 44. Section 9.160 of the Charter of the City of Reno, being chapter 553, Statutes of Nevada 1973, at page 886, is hereby amended to read as follows:

Sec. 9.160 Prohibited acts.

1. No ~~appointments~~ *appointment* to or removal from a position in the Civil Service ~~shall~~ *may* be affected in any manner by any ~~individual's~~ *person's*:

(a) Race, color, national origin, age, sex, marital status, sexual orientation, gender identity or expression, disability, membership or nonmembership in an employee organization, ~~for~~ *religion*, religious beliefs or affiliations ~~;~~

~~—(b)—Sex, marital status, age, or physical or visual handicap except when the Commission has certified that such fact constitutes a reasonable occupational qualification or disqualification for employment.~~

~~—(c)—~~ *, or any other characteristic for which such action is prohibited by the law of the State or of the United States, except when based upon a bona fide occupational qualification or otherwise authorized by law.*



(7) Political beliefs or affiliations except if that ~~individual~~ ~~person~~ advocates or is a member of any organization that advocates the overthrow of the government of the United States by other than lawful means.

2. ~~No~~ A person shall ~~not~~ practice any deception, fraud or unfair practice with respect to application, examination, employment or any other procedure authorized under this article or Commission rule, or in any information given to the Commission.

Sec. 45. Section 9.270 of the Charter of the City of Reno, being chapter 553, Statutes of Nevada 1973, as last amended by chapter 65, Statutes of Nevada 1981, at page 162, is hereby amended to read as follows:

Sec. 9.270 Appeals to the Commission.

1. An employee in the Civil Service who has been suspended for a period of more than 3 days or who is the subject of an action by the City Manager to demote or terminate him or her may appeal such action to the Commission by serving the Secretary of the Commission with a written notice of appeal within 10 days after such action. The Commission shall set the time for hearing the appeal not less than 5 nor more than 15 days after the date of service of the notice of appeal.

2. The Commission shall adopt a rule for hearing such appeals and making any investigations it deems appropriate. In all appeals to the Commission, the City Attorney shall represent the interest of the City.

3. In connection with any hearing or investigation contemplated by this article each member of the Commission may administer oaths, secure by subpoena the attendance of witnesses residing within 50 miles of the City ~~of Reno~~ and the production of books and papers relevant to the hearing or investigation, compel witnesses to answer and punish for contempt in the same manner as provided by law for the governing of trials before justices of the peace for failure to answer or produce books and other evidence necessary for the hearing. All witnesses must be under oath. The accused has the right to be heard in person and by attorney in his or her own defense and is entitled to secure the attendance of witnesses at the expense of the City if within the reach of the Commission's subpoena and necessary for his or her defense. Upon a showing of necessity an accused may secure from the Commission an order requiring the taking of depositions of



witnesses who are necessary to his or her defense and not within the reach of a subpoena. The Commission shall determine to what extent the expense of such depositions will be paid for by the City. Hearings on appeal must be reported and may be transcribed if a transcript is necessary for a deliberation of the Commission or for an appeal to the district court. The Commission shall render its decision within 7 days after the date of the hearing.

4. The action taken by the City Manager may be affirmed, modified or revoked by the Commission. If the Commission finds that the reason for which the action was taken is insufficient it must modify or revoke the action.

5. The Commission shall adopt a rule for the hearing and disposition of appeals concerning procedures or the content of examinations.

Sec. 46. Section 9.280 of the Charter of the City of Reno, being chapter 553, Statutes of Nevada 1973, as amended by chapter 97, Statutes of Nevada 1995, at page 115, is hereby amended to read as follows:

Sec. 9.280 Disciplinary authority of Commission; judicial review.

1. Verified charges may be filed with the Commission setting forth cause for disciplinary action against any Civil Service employee by any resident of the City. The Commission may conduct investigations and hold such hearings as it deems appropriate to determine the facts. If the Commission finds the charges true it may order the suspension, dismissal or discipline of the employee.

2. The Commission on its own initiative may conduct investigations and hearings with respect to violations of this article or rules of the Commission and impose such sanctions as it deems appropriate.

3. ~~{Any}~~ *Within 180 days after service of the decision, any person who is aggrieved by a final decision of the Commission may petition {for judicial review in the manner provided by chapter 333B of NRS;} the district court in the County for relief in the form of a writ of certiorari, mandamus or prohibition where such relief is otherwise authorized by chapter 34 of NRS or other applicable law.*



Sec. 47. Section 7A.030 of the Charter of the City of Reno, being chapter 460, Statutes of Nevada 1979, at page 860, section 9.090 of the Charter of the City of Reno, being chapter 553, Statutes of Nevada 1973, at page 885, section 9.190 of the Charter of the City of Reno, being chapter 553, Statutes of Nevada 1973, at page 886, section 9.200 of the Charter of the City of Reno, being chapter 553, Statutes of Nevada 1973, at page 887, section 9.210 of the Charter of the City of Reno, being chapter 553, Statutes of Nevada 1973, at page 887, section 9.220 of the Charter of the City of Reno, being chapter 553, Statutes of Nevada 1973, at page 887, section 9.240 of the Charter of the City of Reno, being chapter 553, Statutes of Nevada 1973, at page 887, and section 9.250 of the Charter of the City of Reno, being chapter 553, Statutes of Nevada 1973, as amended by chapter 599, Statutes of Nevada 1993, at page 2502, are hereby repealed.

Sec. 48. The amendatory provisions of this act apply prospectively.

Sec. 49. This act becomes effective upon passage and approval.



EXHIBIT “5”

EXHIBIT “5”

Please join us for an evening celebrating
Jessica Sferrazza
In support of her candidacy for
Mayor of Reno

Thursday, September 12, 2013 – 5:30pm

Atlantis Steakhouse Clubroom
3800 S Virginia St

Host Committee:

Councilman Oscar Delgado - Councilwoman Hillary Schieve

Paul Abowd - Alfredo Alonso - Mike Alonso - Brett Bernard - Bill Bradley

Don & Susan Clark - Allyson Denby-Wong - Spike Duque - Steve Duque

Robert Fitzgerald - Jerry Frederick - Craig Garland - Olivia Gobert-Hicks

Pam Haberman - Jennifer Harshburger - Dane & Sundee Hilliard - Joe Horn

Richard Jay - Kamwal Khera - Joan Kruse - Jim Litchfield - Paul McKenzie

Cathleen McStroul - John Metzker - Evelyn Mount - Barry O'Sullivan

Matt Pendola - Kelly Rae - Jennifer Rose - Barrie Schuster

Scott Seldenstricker - John Seymour - Ryan Sheltra - Jesse Singh

Liz Sorenson - Jason Soto - Tom Stewart - Rev. Glenn E. Taylor, Sr.

Abbi Jayne Whitaker - Chuck Zeh

EXHIBIT “6”

EXHIBIT “6”

DORTCH

FOR MAYOR. ★ FOR RENO.



Please join Deb & Nick Rossi
at their home for a fundraising reception

3555 Southampton Drive • Reno, NV 89509

Thursday, October 3
5:30 – 7:30pm

Suggested Contribution:
\$500 individual • \$1,000 corporate

EXHIBIT “7”

EXHIBIT “7”

1 **AFFIDAVIT OF GEORGE "EDDIE" LORTON IN SUPPORT OF WRIT PETITION**

2
3 I, George "Eddie" Lorton, hereby affirm under penalty of perjury, that the following
4 assertions are true of my own personal knowledge:

5 1. That I am the Petitioner in the foregoing Petition for Writ of Mandamus or Other
6 Extraordinary Writ in the Supreme Court of the State of the Nevada;

7 2. That I have read Petition for Writ of Mandamus or Other Extraordinary Writ of
8 even date herewith and know the contents thereof;

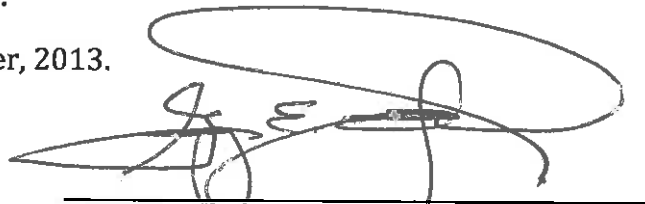
9 3. That I am a citizen voter of the City of Reno and that I have publically declared
10 and further declare herein that I am running for Mayor of the City of Reno in the upcoming
11 2014 election;

12 4. That I have been informed by multiple sources, including the Reno Gazette
13 Journal, that a 2011 Legislative Council Bureau Opinion exists that supports the foregoing
14 Petition and that despite my diligent attempts to obtain a copy of that Opinion for clarification
15 and support of thE Petition, I have been unable to obtain a copy; and

16 5. That the same is true of my knowledge except as to those matters therein stated
17 information and belief, and as to those matters I believe them to be true.

18 FURTHER YOUR AFFIANT SAYETH NAUGHT.

19 Dated this 10 day of October, 2013.

20
21 

22 GEORGE "EDDIE" LORTON

23 SUBSCRIBED and SWORN TO before me

24 this 10 day of October, 2013.

25
26 

27 NOTARY PUBLIC



EXHIBIT “8”

EXHIBIT “8”

STAFF REPORT

Date: September 25, 2013

To: Mayor and City Council

Thru: Andrew Clinger, City Manager

Subject: Staff Report (For Possible Action): Discussion and potential direction to the City Clerk and the City Attorney's Office on pursuing available legal remedies to determine if the office of Mayor is a separate office than that of Council Member for application of term limits imposed by the Nevada Constitution.

From: Lynnette Jones, City Clerk

Discussion: Pursuant to the Reno City Charter Sec. 5.030(2) "the conduct of all [city] elections must be under the control of the City Council..." On October 21, 2008, the Office of the Attorney General sent the attached letter opinion indicating that the office of Mayor is separate and distinct from the office of Council Member for purposes of application of term limits imposed by the Nevada Constitution. That letter opinion may not be dispositive of the issue because a court of competent jurisdiction or Nevada Supreme Court, if appealed, will be the ultimate decider of the question.

Candidates for Mayor will file with the City Clerk from March 3, 2014 through March 14, 2014. By March 25, 2014, which is 5 working days after the last day a person may withdraw his or her candidacy, an elector may file a written challenge of the qualifications of a candidate with the City Clerk under NRS Chapters 293 and 293C. The City Clerk is required to provide the challenge to the City Attorney who then has 5 days to determine if there is probable cause supporting the challenge and to file a petition with a court of competent jurisdiction. Since the 5 days expires on Sunday, March 30, 2014, the City Attorney would be allowed to file the petition the next day the Court is open or Monday, March 31, 2014. The City Clerk must provide the Registrar of Voters for Washoe County complete ballot language for the primary election by March 28, 2014, which leaves no time for a court to consider an elector's challenge prior to processing of the names to be included on the ballot.

Because the issue raises a question of law relating to the application of the Nevada Constitution to the office of Mayor, there may be legal remedies separate from the statutory challenge by an elector allowing the City to seek an opinion from a court of competent jurisdiction. Seeking a legal resolution through the court will enable the City Clerk to timely and properly process the primary election ballot to assure compliance with the Nevada Constitution.

Financial Implications: Not known at this time.

Legal Implications: The legal implications relating to the application of term limits imposed by the Nevada Constitution will be submitted through commencement of a legal action to obtain a timely decision by a court of competent jurisdiction.

Recommendation: It is recommended that City Clerk and City Attorney's Office be provided authority to pursue available legal remedies to confirm if the office of Mayor is a separate office than that of Council Member for application of term limits imposed by the Nevada Constitution.

Proposed Motion: I move to approve the staff recommendation.

Attachments:

- AGO Opinion dated 10-21-2008 (PDF)

EXHIBIT “9”

EXHIBIT “9”



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

JIM SPENCER
Chief of Staff

October 21, 2008

John C. Kadlic, City Attorney
Reno City Attorney's Office
Post Office Box 1900
Reno, Nevada 89505-1900

Dear Mr. Kadlic:

By letter dated August 4, 2008, you requested the assistance of the Office of the Attorney General (Office) in determining whether the office of Mayor of the City of Reno (Mayor) is separate and distinct from that of a Reno City Council member and whether term limits are applicable to the Mayor's position. If term limits apply to the Mayor, you question whether they apply separately from the limits applicable to a City Councilman position.

QUESTION ONE

Is the office of Mayor, which under the Reno City Charter, possesses both unique executive powers and legislative power, subject to term limits established in Article 15, § 3 of the Nevada Constitution?

ANALYSIS

With respect to term limits, the Nevada Constitution provides:

2. No person may be elected to any state office or *local governing body* who has served in *that office*, or at the expiration of his current term if he is so serving will have served, 12 years or more, unless the permissible number of terms or duration of service is otherwise specified in this Constitution.

CONST. NEV. art. 15, § 3 (emphasis added).

Your letter references Op. Nev. Att'y Gen. No. 96-23 (August 9, 1996) (AGO 96-23) which examined the constitutional provision and the applicability of voter-approved term limits to various elected local offices. AGO 96-23 determined that term limitations apply to officials who serve on "local governing bodies" and whose main functions are legislative rather than executive.

That the Reno City Council constitutes a *local governing body* responsible for legislative and policy decisions is axiomatic. Because he or she is a voting member of the Council, the Mayor's duties are therefore legislative in part. Likewise, it is clear that the Reno City Council is described as a body "made up of seven people elected to make policy decisions for Reno City government."¹ The Reno City Council sets priorities, approves budgets, and addresses issues facing the City of Reno.

The Mayor's duties, however, extend beyond those of the City Councilmen. Under the Reno City Charter, the offices of Mayor and City Councilman are described in the legislative department of the city. See Reno City Charter, art. II, § 2010.² But the Mayor's additional duties are enumerated in Article III which pertains to the Executive Department.

Section 3.010 provides:

1. The Mayor:
 - (a) Shall serve as a member of the City Council and preside over its meetings.
 - (b) Shall not have any administrative duties.
 - (c) Must be recognized as the head of the City government for all ceremonial purposes.

¹ See Reno City Council's website at: www.cityofreno.com

² Reno City Charter, art. II, § 2.010 provides:

1. The legislative power of the City is vested in a City Council consisting of six Councilmen and a Mayor.
2. The Mayor and Councilmen must be qualified electors within the City. Each Councilman elected from a ward must continue to live in that ward for as long as he represents the ward.
3. The Mayor and one Councilman represent the City at large and one Councilman represents each ward. The Mayor and Councilmen serve for terms of 4 years.
4. The Mayor and Councilmen are entitled to receive a salary in an amount fixed by the City Council.

(d) Shall determine the order of business at meetings pursuant to the rules of the City Council.

(e) Is entitled to vote and shall vote last on all roll call votes.

(f) Shall take all proper measures for the preservation of the public peace and order and for the suppression of riots and all forms of public disturbance, for which he is authorized to appoint extra policemen temporarily and without regard to Civil Service rules and regulations, and to call upon the Sheriff of Washoe County, or, if that force is inadequate, to call upon the Governor for assistance.

(g) Shall perform such other duties, except administrative duties, as may be prescribed by ordinance or by the provisions of Nevada Revised Statutes which apply to a mayor of a city organized pursuant to the provisions of a special charter.

2. At the first regular City Council meeting in November of each year, the City Council shall elect one of the Councilmen to be Assistant Mayor. That person:

(a) Holds that office and title, without additional compensation, for a term of 1 year or until removed after a hearing for cause by a vote of six-sevenths of the City Council.

(b) Shall perform the duties of Mayor during the absence or disability of the Mayor.

(c) Shall act as Mayor if the office of Mayor becomes vacant until the vacancy is filled pursuant to section 1.070 of this Charter.

Reno City Charter, art. III, § 3.010.

Thus just as AGO 96-23 observes, the Mayor has both executive and legislative functions.³

You have suggested that this Office determine the "main function" of the Mayor's office in order to answer the question whether the Mayor is subject to term limits. We do not agree, however, this is the appropriate test. As we stated in Op. Nev. Att'y Gen. 96-23:

³ Although the Reno City Charter vests in the City Manager the task of Chief Administrator, the Reno Mayor has his own set of executive responsibilities set forth in the City Charter.

[I]f the creating instrument indicates the mayor's *main function* is to be an administrator for the city, *and* the mayor does not exercise legislative power as a member of the city council, then the mayor would not be subject to term limits. If, on the other hand, the mayor functions as a member of the city council, a governing body, then term limits would apply to that position as well as to the other members of the city council.

Op. Nev. Att'y Gen. 96-23 (emphasis added). Since the Mayor does function as a member of the council and exercises the legislative powers of a councilman, he or she is subject to term limits. It is unnecessary to determine, for this purpose, what the main function of the office of the Mayor is.

CONCLUSION TO QUESTION ONE

The office of Mayor is subject to term limits because the Mayor performs legislative, not just executive and administrative functions.

QUESTION TWO

Is the office of Mayor the same as the office of Reno City Councilman for purposes of determining term limits?

ANALYSIS

The ultimate question that you ask is whether the Mayor's office and the office of City Councilman are sufficiently distinct to be considered separate positions so that time in office for one position would not be counted towards the term limitations of the other. Although there are overlapping functions between the Mayor and City Councilman positions, relating primarily to their participation on the City Council, it is our opinion that the two positions are nevertheless separate and distinct. The voters certainly understand that the offices are distinct; they cast votes for Mayor and City Councilman respectively, and the Mayor has additional independent executive duties which are distinguishable from other City Councilman positions. While the City Manager is considered the Chief Executive and Administrative Officer⁴ of the City of Reno, the Mayor has his own designated executive functions in addition to ceremonial ones. Cf. La. Att'y Gen. Op. No. 08-0082 (June 11, 2008) ("It is the conclusion of this office that [term limits ordinance] provides no impediment to you again seeking the office of city councilman after your term as Mayor is completed").

⁴ Reno City Charter, § 3.020.

John J. Kadlic
October 21, 2008
Page 5

CONCLUSION TO QUESTION TWO

The offices of Mayor and City Councilman are two separate offices, and time in office served by an incumbent in one does not count towards term limitations for the other.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:



MARTA A. ADAMS
Chief Deputy Attorney General
Bureau of Government Affairs
(775) 684-1237

MAA/CAB

EXHIBIT “10”

EXHIBIT “10”



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

JIM SPENCER
Chief of Staff

March 9, 2010

OPINION NO. 2010-05

LOCAL GOVERNMENT; TERM
LIMITATIONS: NEV. CONST. art. 15, § 3
prevents a person from being re-elected
to a different seat of the same local
governing body on which he has already
served 12 or more years.

Jim C. Shirley, District Attorney
Pershing County
Post Office Box 299
400 Main Street
Lovelock, Nevada 89419

Dear Mr. Shirley:

I am in receipt of your letter wherein you request guidance from this Office on two questions related to term limits: (1) Whether the constitutional term limits impose a "life time ban," or merely prohibit more than 12 years of *consecutive* service; (2) Whether the term limits provisions prohibit re-election of a person to a different seat on a legislative body if he has already served 12 or more years in another seat of that same body.

QUESTION ONE

Does NEV. CONST. art. 15, § 3 impose a "life time ban," or only a ban on consecutive terms?

ANALYSIS

With regard to your first question, the Legislative Counsel Bureau issued an opinion on August 6, 1996, finding that the term limits impose a life time ban. We

agree with this conclusion.¹ A copy of the opinion is attached hereto for your convenience. The relevant analysis can be found on pages 25–28.

To summarize, NEV. CONST. art. 15, § 3(2) provides:

No person may be elected to any state office or local governing body who has served in that office, or at the expiration of his current term if he is so serving will have served, 12 years or more, unless the permissible number of terms or duration of service is otherwise specified in this Constitution. [Emphasis added.]

The plain language of the provision states that no one may be elected who has served 12 or more years in that office. It is not limited to situations where the years of service are consecutive or successive. Accordingly, it imposes a life time ban on service.

CONCLUSION TO QUESTION ONE

NEV. CONST. art. 15, § 3 imposes a life time ban on re-election when a person has served, or will have served at the end of his current term, 12 years or more.

QUESTION TWO

Does NEV. CONST. art. 15, § 3 prevent a person from being re-elected to a different seat of the same local governing body on which he has already served 12 or more years?

Your next question involves an analysis of whether each seat on a legislative body constitutes a separate office. The term limits provision states that no person may be elected “to any *state office or local governing body*” if he has served or will have served 12 years or more “in that office.” NEV. CONST. art. 15, § 3(2).

The constitution does not define “office” for purposes of term limits. However, words in a constitution must be construed in harmony whenever possible, and construed in such a way as to carry out the intent of the enacting authority. See *We the People Nevada ex rel. Angle v. Miller*, 124 Nev. ___, 192 P.3d 1166, 1170 (Adv. Op. 75, Sept. 25, 2008) (rules of statutory interpretation apply to interpreting constitutional provisions); *Nevadans for Nevada v. Beers*, 122 Nev. 930, 944, 142 P.3d 339, 348

¹ Although that opinion dealt specifically with state legislators, we believe the analysis is equally applicable to local legislative bodies, as the language is virtually identical.

(2006) (constitutional provisions should be read as a whole and harmonized whenever possible).

Once more, the relevant provision states:

No person may be elected to any *state office* or *local governing body* who has served *in that office*, or at the expiration of his current term if he is so serving will have served, 12 years or more, unless the permissible number of terms or duration of service is otherwise specified in this Constitution.

NEV. CONST. art. 15, § 3(2) (emphasis added).

The term “that office” must be read in context with the first clause, which refers to either a state office or a local governing body. The term “local governing body” does not identify a particular “office” or “seat.” It instead refers to an *institution*. Accordingly, it appears that the plain language of the constitution prohibits a person from being re-elected to the body as a whole, regardless of which seat the person would serve in.

This is consistent with the apparent intent behind the term limits amendment. With regard to assemblymen and senators, the constitution explicitly states that no one is eligible to serve more than 12 years, regardless of which district he represents. See, e.g., NEV. CONST. art. 4, § 3 (“No person may be elected or appointed as a member of the Assembly who has served in that Office, or at the expiration of his current term if he is so serving will have served, 12 years or more, *from any district of this State.*”). See Op. Nev. Legis. Counsel, p. 24 (August 6, 1996).

The explanation to Question 9 on the 1996 ballot (the term limits amendment) states that assemblymen and senators would each be limited to 12 years, as would “other state officers and local governing body members.” In Op. Nev. Att’y. Gen. No. 96-23 (August 9, 1996), this Office opined that a “local governing body” is one that “performs legislative functions, makes policy for the jurisdiction it governs, and makes decisions as opposed to making recommendations.” This is similar to the function performed by the Legislature on a statewide level.

Additionally, one of the stated purposes of the term limits amendment was to “stop career politicians since no one will be able to hold one office for several terms.” Another was to reduce the power of lobbyists and special interests “since state officials and local governing body members will only be in office for a limited amount of time.” See Argument in favor of passage of Question 9, 1996. Permitting a person to be

Jim C. Shirley, District Attorney
March 9, 2010
Page 4

elected to different seats on the same body, even after serving 12 years or more, would defeat these stated purposes. See Op. Colo. Att'y. Gen. No. 00-5, p. 5 (July 10, 2000).

Accordingly, we conclude that the term limits provisions for local governing bodies was intended to prohibit re-election to the body as a whole, just as the term limits provisions prohibit re-election of legislators, regardless of which districts they represented.

CONCLUSION TO QUESTION TWO

NEV. CONST. art. 15, § 3 prevents a person from being re-elected to a different seat of the same local governing body on which he has already served 12 or more years.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:

KEVIN BENSON
Deputy Attorney General
Government & Natural Resources
Division
(775) 684-1114

KB/LSD

EXHIBIT “11”

EXHIBIT “11”

2000 WL 1072393 (Colo.A.G.)

Office of the Attorney General

State of Colorado
AG Alpha No. ST AG AGBAJ
Formal Opinion No. 00-5
July 10, 2000

***1** Ms. Donetta Davidson
Secretary of State

This opinion is issued at the request of the Colorado Secretary of State, Ms. Donetta Davidson. In her letter of April 25, 2000, the Secretary of State poses several questions that seek to clarify limitations on the number of terms that may be served by elected officials in Colorado.

The term limits addressed in this opinion are set forth in Articles V, § 3(2) and XVIII, § 11 of the Colorado Constitution. These term limits were enacted through initiatives approved by the People of the State of Colorado in 1990 (Amendment No. 5) and 1994 (Amendment 17).

QUESTIONS PRESENTED AND CONCLUSIONS

Question No. 1: If an elected official has served the maximum number of consecutive terms in an elected body as a representative of one district, may that elected official move to a different district and immediately run for election to the same body to represent the new district?

Answer No. 1: No. An elected official from a particular district who has served the maximum number of consecutive terms in an elected body is precluded from immediately running for election to that body from another district.

Question No. 2: If redistricting creates a new or reconfigured district, may a term limited elected official immediately run for election to the same body from a new or reconfigured district?

Answer No. 2: No. Redistricting does not increase the limitation on consecutive terms that may be served by an elected official in a particular elected body.

Question No. 3: If an elected official has served the maximum number of consecutive terms for an "at-large" seat in an elected body, may that official immediately run for election to a specific district seat in that body? Conversely, if a member has served the maximum number of consecutive terms as a representative from a particular district, may that member immediately run for an at-large seat to the same body?

Answer No. 3: Both questions are answered in the negative. An "at-large" member of an elected body who has served the maximum number of consecutive terms may not thereafter run for election for a specific district seat in the same body. Similarly, a member of an elected body who occupies a district seat and has served the maximum number of consecutive terms is precluded from running immediately thereafter for election to that body as a member "at-large."

BACKGROUND

Article V, § 3(2), of the Colorado Constitution limits the number of terms a state senator or representative may hold in the Colorado General Assembly.

In order to broaden the opportunities for public service and to ensure that the general assembly is representative of Colorado citizens, no senator shall serve more than two consecutive terms in the senate, and no representative shall serve more than four consecutive terms in the house of representatives. This limitation shall apply to terms of office beginning on or after January 1, 1991. Any person appointed or elected to fill a vacancy in the general assembly and who serves at least one-half of a term of office shall be considered to have served a term in that office for the purpose of this subsection (2).

***2** This constitutional provision is referred to as the “State Term Limit Amendment” in the discussion that follows.

A second, similar portion of Colorado's constitution applies to officials elected to offices in political subdivisions of the state. Article XVIII, § 11, of the Colorado Constitution, referred to below as the “Local Term Limit Amendment,” states in pertinent part:

[N]o nonjudicial elected officials of any county, city and county, city, town, school district, service authority, or any other political subdivision of the State of Colorado . . . shall serve more than two consecutive terms in office¹

The two preceding provisions are referred to collectively as the “Term Limit Amendments.”

The issues addressed in this opinion are not answered by a simple reading of the Term Limit Amendments. Although a number of reported court decisions address various issues related to term limitations, we are unaware of any case in Colorado, or in any other jurisdiction, that addresses directly the questions raised in this opinion. They are matters of first impression in Colorado.

Finally, the Term Limit Amendments restrict only those who would seek election to an elected body in which they served during the immediately previous term.

Nothing in this opinion addresses or restricts the ability of a term-limited elected official to seek office in a different elected body.

DISCUSSION

A single analysis, developed below, provides the foundation to answer each of the questions posed by the Secretary of State. For that reason, analyses of the separate questions are not broken out individually in this discussion.

As always, the inquiry starts with the specific words and phrases chosen in the Term Limits Amendments. In this instance, resolution of the issues presented turns on the meaning of the phrases “in the senate,” “in the house of representatives,” and “in office,” as used in these provisions. If these phrases refer only to a particular district (e.g., the District 7 representative) or seat (e.g., an “at-large” seat), then a member elected from one district or seat may run immediately for office from another district or a specific district. Conversely, if these phrases refer more broadly to the elected institutions involved, e.g., the senate, house of representatives, or city council involved, then a member who has served the maximum number of consecutive terms in the elected body involved is precluded from running immediately for another term, even from a different district or seat.

When the words and phrases used in a constitutional provision are plain and unambiguous, the legal inquiry is at an end. They are to be given their plain and unambiguous meaning. *Kane v. Town of Estes Park*, 786 P.2d 412 (Colo. 1990). In this instance, the first sentence of the State Term Limit Amendment is very specific: no senator shall serve more than two consecutive terms “in the senate” and no representative shall serve more than four consecutive terms “in the house of representatives.” These phrases plainly refer to the elected institutions as a whole, and not to an election from a specific district or seat.

*3 In contrast, the use of the term “office” in the second and third sentences of the State Term Limit Amendment is ambiguous. While the references to “in the senate” and “in the house” plainly refer to the whole elected bodies, the reference to an “office” is much less specific. In some contexts, senators and representatives are associated with, and are identified by, their particular district.² Moreover, the demographics of individual districts can vary widely and these differences can be important considerations in federal Voting Rights Act cases and in constitutional law. *Sanchez v. State of Colorado, et al.*, 97 F.3d 1303 (10th Cir. 1996). If “office” is intended to refer to a particular district held by the senator or representative, then, to be consistent, “in the senate” or “in the house of representatives” must also refer to individual districts.

The use of “office” in the Local Term Limit Amendment similarly is ambiguous. Unlike the State Term Limit Amendment, however, the Local Term Limit Amendment does not contain a specific reference to an institution as a whole.³

A number of considerations suggest that the word “office” in both Term Limit Amendments refers broadly to entire elected institutions and not to individual districts or seats from which officials are elected. First, with respect to the State Term Limit Amendment, the substance of the term limit prohibition is set forth in the first sentence and is stated in terms of “in the senate” and “in the house of representatives.” The term “office” in the second sentence appears only to be a shorthand reference to the more specific phrases of the first sentence. As such, the more general term, “office,” is given meaning by reference to the more specific phrases in the first sentence (“in the senate” and “in the house of representatives”). *Burlington Northern Railroad Co. v. Stone Container Corp.*, 934 P.2d 902 (Colo. 1997) (specific terms prevail over general terms).

Second, ambiguous terms in the constitution should be construed in light of, and give effect to, the purposes of the provision involved. *See Water Rights of Park County Sportsmen's Ranch, LLP v. Bargas*, 986 P.2d 262 (Colo. 1999) (when addressing questions of statutory construction, courts must ascertain the intent of the legislation and adopt a construction that best effectuates the purposes of the legislative scheme). I conclude that interpreting the term “office” to refer broadly to the elected institution, rather than to a particular district or seat, is more consistent with the purposes of the Term Limit Amendments, as described below.

The purposes of the Term Limit Amendments can be determined by reference both to the Amendments themselves and to the ballot documents drafted at the time the initiatives were enacted. *Carrara Place Ltd. v. Arapahoe County Bd. Of Equalization*, 761 P.2d 197 (Colo. 1988); *Legislature of the State of California v. Eu*, 54 Cal.3d 492, 816 P.2d 1309 (Calif. 1991) (“Indicia of the intent of the voters with respect to initiative measure includes analysis and arguments contained in the official ballot pamphlet.”). In Colorado, the Legislative Council of the Colorado General Assembly publishes and disseminates pamphlets that analyze ballot proposals.⁴

*4 The Term Limit Amendments state a two-fold purpose: “to broaden the opportunities for public service” and to “assure that elected officials of governments are responsive to the citizens of those governments.” Colo. Const., Arts. V, § 3(2) and XVIII, § 11(1). These twin purposes are also expressed and described in more detail in the 1990 and 1994 ballot proposal pamphlets.

In the 1990 ballot proposal pamphlet, the arguments supporting the adoption of term limits are stated as follows: Our founding fathers believed holding elected office was a public service to be performed only for a limited time. Today, however, we refer to some elected officials as “career” or “professional” politicians and many such officials view their positions as career or lifetime jobs. This careerism stems partly from the fact that incumbents seeking reelection nearly always win. Once in office for long periods of time, incumbents tend to lose touch with the interests of their constituents and focus more of their attention on issues over which they have gained power through the seniority system. The result is a system in which political participation is discouraged, office holders are unresponsive to constituents, and elected officials spend more time on election campaigns than they do on their duties as public officials. A return to a “citizen” government through the limitations of terms is the answer to this political congestion.

Long periods of service by public office holders does provide for experience but does not necessarily provide citizens with better lawmakers. Limiting terms of office will allow more individuals, particularly those with established professions or occupations

outside of public office, the opportunity to serve the public. Broadening public service will invigorate the political system by making room for new policy makers with new perspectives on addressing public policy issues. Realizing that their terms of office are limited, public office-holders will be more productive, devote more time to their duties as elected officials, and will be more bold in political decision-making without fearing the potential impact of such decision on future reelection efforts. 1990 Ballot Analysis, *supra*, at 21.

The 1994 Ballot Analysis restates many of these arguments. It declares:

Voters in Colorado adopted the concept of term limits in 1990 as a method of keeping elected officials from viewing their positions as lifetime or career jobs. By forcing turnover, new people will be able to enter the political scene and bring fresh ideas into the legislative branch of the government and to local governments. 1994 Budget Analysis, *supra*, at 54.

The purposes of Colorado's Term Limit Amendments are similar to the purposes of term limit initiatives enacted in other states in the early and mid-1990s. *See, e.g., Schweisinger v. Jones*, 68 Cal. App. 4th 1320, 1324, 81 Cal. Rptr. 2d 183 (Calif. 1998) ("The primary purpose of Proposition 140 is to limit the advantages of incumbency and eliminate 'a class of career politicians,' instead of the citizen representatives envisioned by the Founding Fathers."); *Ray v. Mortham*, 742 So.2d 1276, 1285 (Fla. 1999) ("The voters have also expressed a belief that politicians who remain in office too long may become preoccupied with reelection and become beholden to special interests and bureaucrats.").

***5** Construing the term "office" to refer to the institution rather than to a particular district or seat within that institution is consistent with the purposes of the Term Limit Amendments. One of the principal goals of the Term Limit Amendments is to prevent political "careerism." Interpreting "office" to refer to a particular district would defeat this purpose. It would permit an elected official who has served the maximum number of consecutive terms in one district or seat to run for an "at-large" seat rather than a district seat, or to run again because some portion of the district's boundary has been altered. Interpreting "office" to refer to an institution, on the other hand, prohibits elected officials from extending their political careers in such circumstances. The latter interpretation more clearly effectuates this principal goal of the Term Limit Amendments.

Moreover, the authority and responsibility of an "office" extend beyond the interests of a particular district. An elected official may vote on any matter that comes before the governing body, even though the official is elected from a particular district or seat. In many cases, issues will affect the entire electorate and not just those within the official's own district. In this sense, the boundaries of the district or the nature of the seat the elected official occupies are not significant.

This distinction between the "office," on the one hand, and the electorate from which the official is elected, on the other hand, was drawn in *Olsen v. Merrill*, 5 P.2d 226 (Utah 1931). Redistricting resulted in an elected official residing in a district different from the one in which he was originally elected. Plaintiff, seeking a court determination that the change in boundaries resulted in a vacancy in the "office," argued the incumbent should not be permitted to hold office when he lived outside the district that elected him. The court rejected the claim, observing that:

[t]he duties of the plaintiffs as members of the board of education of Provo City are in no sense confined to the municipal wards from which they were elected; Every act that a member of the board is required to perform is an act for the entire school system. The only purpose served by a division of the city into municipal wards, in so far as the school system is concerned, is that each ward shall elect one member of the board. So long as the board member resides within the boundaries of the city he has or should have a direct interest in maintaining an efficient school district within the city. *Id.*, at p. 228.

Thus, changing or reconfiguring districts or seats will not necessarily result in a “freshness of ideas” on the host of office-wide issues. On the other hand, interpreting “office” to refer to an institution necessarily brings in entirely new office holders. This latter view is more consistent with the goal of “freshness of ideas” of the Term Limit Amendments.

***6** Defining “office” to refer broadly to the elected institution is consistent with court interpretations of term limitation provisions in other contexts. Courts have construed term limit amendments liberally to effectuate their purposes. *Schweisinger v. Jones*, 68 Cal. App. 4th 1320, 31 Cal. Rptr. 2d. 183 (Calif. 1998); *League of Women Voters v. Secretary of State*, 683 A.2d 769 (Maine 1996). For the reasons discussed above, interpreting “office” to refer to the institution will more likely bring the “freshness of ideas” and mitigate the concerns of the power of special interests than an interpretation that permits elected officials to run for the same institution from a different seat or district.

Moreover, when assessing the intent and purposes of voter initiatives, courts give effect to the likely understanding of the “average voter,” and generally eschew subtle legal nuances. *See, e.g., McLauglin v. State Board of Education*, 75 Cal.App.4th 196, 216, 39 Cal.Rptr.2d 295 (Calif. 1999) (term limit initiative construed to give effect to “what the ‘average voter’ would understand to be the intent of the law upon which he or she was voting”). An interpretation which construes “office” to distinguish between, for example, an “office” of a member at-large and an “office” of a particular seat, is not readily apparent from the language of the Term Limit Amendments, and, therefore, not likely the understanding of the “average voter.”

Courts have rejected interpretations that frustrate the apparent purposes of term limits. For example, in *Schweisinger v. Jones*, *supra.*, 68 Cal.App.4th 1320, plaintiff argued that “term” should be construed to require a full term and not a partial term. The court noted that if it were to adopt that definition, an elected official could run repeatedly by resigning shortly before the end of the term and thereby frustrate the purposes of the limitation. In the present case, interpreting “office” so as to allow an elected official to hold office for additional terms in the same elected institution because, for example, some portion of the district or ward is redrawn, or because the official is now running for a district seat rather than a “at-large” seat, would be at odds with the general purpose of the Term Limit Amendment.

Finally, an interpretation of “office” to refer only to a particular district creates complexity and confusion in the application of the Term Limit Amendments. If an official can run in a new district, then there is no obvious reason why the official could not also run from the same district in which the boundary lines have been redrawn. Aside from the problem that a reconfigured district may not change in any dramatic way the demographics of the old district, a complex and, perhaps, unsolvable problem arises of determining how much of a change is required in order for there to be a “new” district.

CONCLUSION

Based upon the analyses set forth above, I interpret the phrases “in the senate,” “in the house of representatives,” and “office,” as used in the Term Limit Amendments, to refer generally to an elected institution, and not to a particular district or seat from which a member is elected. It follows that an elected official who has served a maximum number of consecutive terms cannot immediately run again to the same elected body, and avoid the effect of the Term Limit Amendments, by moving to a new or reconfigured district or seat.

***7** Therefore, I answer each of the questions posed by the Secretary of State in the negative. Moving to a new district will not allow a term limited elected official to run immediately for election to the same body. Redistricting will not allow a term limited official to run immediately for election to the same body. Finally, a change in the at-large or specific district nature of the seat the elected official currently occupies will not allow a term limited elected official to run again immediately for election to the same body.

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Footnotes

- 1 If the term is less than two years, then the member is limited to three terms. Colo. Const., Art. XVIII, 11(1).
- 2 The senate and house of representatives are divided into districts. Article V, §§ 45 and 46.
- 3 The absence of a specific reference to individual institutions does not suggest that "office" is intended as a reference to a particular district or seat. There are many types of municipal institutions to which officials are elected. Listing these institutions in the Amendment would be cumbersome.
- 4 The 1990 and 1994 analyses by the Legislative Council for the Colorado General Assembly are published pursuant to 2-3-305, C.R.S. and are generally made available to the public as a guide to the statewide measures decided in the 1990 and 1994 general elections. Legislative Council of the Colorado General Assembly, *An Analysis of 1990 Ballot Proposals* (1990) (Research Publication No. 350) ("1990 Ballot Analysis"); Legislative Council of the Colorado General Assembly, *An Analysis of 1994 Ballot Proposals* (1994) (Research Publication No. 392) ("1994 Ballot Analysis"). Portions of these analyses are attached to this opinion. The Colorado State Archives also maintains audiotapes of joint "Review and Comment" meetings of the Legislative Council and Legislative Legal Services Committee. These entities meet with proponents and opponents of an initiative to review and comment on initiatives. Unfortunately, no tape exists of the joint meeting for the 1990 initiative, and the 1994 tape is inaudible. The State Archives also maintains tapes of the meetings of the Colorado Title Setting Board concerning the 1994 initiative. Our review of these tapes reveals that no discussions at these Title Board Meetings were relevant to the issues discussed in this opinion.

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